Supreme Court, U. S.
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APPENDIX

in the

Supreme Court of the United States

October Term, 1974

No. 74-942

FRANK L. RIZZO, et al.,
Petitioners,
v.
GERALD G. GOODE, et al.,
Respondents,

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,
Petitioners,
v.
COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petition for Certiorari filed January 30, 1975
Certiorari Granted March 31, 1975

PRESS OF ALLEN, LANE & SCOTT, INC., PHILADELPHIA

INDEX

PAGE

GOODE, et al. v. *RIZZO, et al.*

Relevant Docket Entries 1a

Complaint 11a

Defendants' Motion to Dismiss 23a

Order Allowing Class Action 24a

Answer of Defendants 25a

Amendment to Answer 34a

COPPAR, et al. v. *TATE, et al.*

Relevant Docket Entries 9a

Complaint 35a

Defendants' Motion to Dismiss 61a

Answer of Defendants 62a

Opinion of the District Court for the Eastern District of Pennsylvania, Dated March 14, 1973 ..... 65a

Order of the District Court for the Eastern District of Pennsylvania, Dated March 14, 1973 ..... 131a

Order of the District Court for the Eastern District of Pennsylvania, Dated March 14, 1973 ..... 132a

Letter, John McNally, Esq., Dated April 12, 1973, with Enclosures (Draft of "Directive 127" and Attachments) 133a

Defendants' Proposed Order for Implementation of the March 14, 1973 Order of the Court Dated April 12, 1973 ..... 135a

Letter, Peter Hearn, Esq., Dated April 24, 1973, with Enclosures 146a

Plaintiffs' Proposed Order for Implementation of the March 14, 1973 Order of the Court Dated April 24, 1973 ..... 147a

PAGE

PLAINTIFFS' MEMORANDUM IN RESPONSE TO DEFENDANTS' PLAN FOR THE HANDLING OF CITIZEN COMPLAINTS AGAINST POLICE 163a

DEFENDANTS' PROPOSED FINAL JUDGMENT FILED SEPTEMBER 18, 1973 ..... 168a

LETTER OF DISTRICT COURT TO COUNSEL, DATED SEPTEMBER 27, 1973, WITH ENCLOSURE 178a

MEMORANDUM OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, DATED OCTOBER 5, 1973 ..... 181a

ORDER OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, DATED OCTOBER 5, 1973 ..... 187a

MEMORANDUM OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, DATED DECEMBER 18, 1973 ... 188a

ORDER OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, DATED DECEMBER 18, 1973 ..... 191a

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, DATED DECEMBER 6, 1974 ..... 192a

ORDER OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, DATED MAY 7, 1975 ..... 193a

FINAL JUDGMENT OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, FILED OCTOBER 5, 1973, INCORPORATED HEREIN BY REFERENCE, APPEARS IN THE PETITION FOR THE WRIT OF CERTIORARI AT PAGE 20a.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED NOVEMBER 1, 1974, INCORPORATED HEREIN BY REFERENCE, APPEARS IN THE PETITION FOR THE WRIT OF CERTIORARI AT PAGE 1a.

RELEVANT DOCKET ENTRIES

Goode et al. v. *Rizzo et al.*

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 70-491

February 17, 1970	Complaint filed
April 1, 1970	Defendants' Motion to Dismiss filed
April 13, 1970	Argument sur: Defendants' Motion to Dismiss
April 17, 1970	Argument sur: Defendants' Motion to Dismiss
April 17, 1970	Order denying Defendants' Motion to Dismiss filed
April 21, 1970	Plaintiffs' Motion for Determination that action may be maintained as class action filed
April 24, 1970	Answer filed
May 12, 1970	Order that this action be maintained as a class action on behalf of all residents of City of Philadelphia filed
May 13, 1970	Non-Jury Trial
May 21, 1970	Trial resumes
May 22, 1970	Trial resumes
June 18, 1970	Hearing re: Plaintiffs' Motion for Sanctions
June 18, 1970	Hearing re: Defendants' Motion for Leave to File Amended Answer
June 19, 1970	Defendants' Motion to Amend Answer filed
June 19, 1970	Order granting Defendants' Motion to Amend Answer filed

Relevant Docket Entries

July 8, 1970	Trial resumes
July 9, 1970	Defendants' Motion to Dismiss under Rule 41 (b) C.A.V.
August 17, 1970	Trial resumes
August 18, 1970	Trial resumes
September 3, 1970	Trial resumes
October 1, 1970	Plaintiffs' Proposed Findings of Fact filed
October 30, 1970	Defendants' Proposed Findings of Fact and Conclusions of Law filed
November 4, 1970	Plaintiffs' Proposed Findings of Fact and Conclusions of Law filed
March 15, 1973	Opinion and Order, Fullam, J., dated 3/14/73, plaintiffs are to make appropriate amendments to caption to reflect personnel changes, etc., defendants to submit to court within 30 days a comprehensive program for improving handling of citizen complaints alleging police misconduct, etc., copy of such proposal to be submitted to plaintiffs' counsel, plaintiffs may file counterproposals within 10 days, filed
April 12, 1973	Letter from John McNally, Esquire to Judge Fullam enclosing draft of "Directive 127" and attachments filed
April 24, 1973	Plaintiff's memorandum in response to defendants' plan for handling of citizen complaints against police, filed
September 11, 1973	Order, pursuant to Rule 25(d) amending caption to read as follows Gerald G. Goode, et al. v. Frank L. Rizzo, Mayor, et al., filed

Relevant Docket Entries

September 12, 1973	Plaintiffs' Motion for Attorneys' Fees and Costs, Notice of Motion, Affidavit in support and Memorandum in support thereof, filed
September 18, 1973	Defendants' Proposed Final Judgment filed
September 27, 1973	Letter from Judge Fullam to all counsel with enclosure filed
October 5, 1973	Memorandum and Order that defendants shall pay plaintiffs in *Goode* case (C.A. 70-491) counsel fees in the sum of $25,000 plus disbursements and costs in the sum of $4,167.58, (2) that defendants pay to the plaintiffs in the *COPPAR* case (70-2430) counsel fees in the sum of $10,000 plus disbursements and costs in the sum of $250, (3) that the memorandum and order be filed of record in both cases, filed
October 5, 1973	Final Judgment that defendant, Joseph F. O'Neill shall forthwith promulgate as an intra-departmental directive procedures for the receipt, investigation and deposition of certain complaints of police misconduct, etc., filed
October 24, 1973	Defendants' Notice of Appeal, filed
October 24, 1973	Defendants' Notice of Appeal, filed
November 5, 1973	Plaintiffs' Notice of Cross-Appeal, filed
November 27, 1973	Plaintiffs' Motion to Enforce Final Judgment, Notice of Motion, Affidavit in support and Memorandum in support, filed

November 27, 1973	Defendants' Motion for Stay, Notice of Motion, Memorandum in support, filed
December 19, 1973	Memorandum and Order, Fullam, J., dated 12/18/73 that the Defendants' Motion for Stay of the Final Judgment entered on October 5, 1973 is DENIED. Plaintiffs' Motion for Enforcement of the Final Judgment in these cases is Granted, effective 5 days from and after the date of this order, filed
May 8, 1975	Order, Fullam, J., dated 5/7/75 that Letters and enclosures shall be Docketed nunc pro tunc as of their respective dates, filed

COPPAR et al. v. *Rizzo et al.*

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 70-2430

September 3, 1970	Complaint, filed
Eo. Die.	Motion for Preliminary injunction, filed
Eo. Die.	Motion for temporary restraining order, filed
September 4, 1970	Hearing sur motion for temporary restraining order—Witnesses sworn, JF. Caption amended by substituting "Coalition" for "Council"
Eo. Die.	Temporary Restraining Order enjoining police from violating rights

	of plaintiffs guaranteed to them under the Constitution of the U.S., etc. until further hearing, fixed for 9/11/70 at 10 a.m., and denying without prejudice plaintiffs motion for temporary restraining order as to defendants Tate, Corleto and Specter, securities to be entered by plaintiffs in the sum of $1.00, filed (9/8/70 entered and copies mailed)
September 11, 1970	Order continuing hearing to 9/21/70 at 10:00 a.m.; temporary restraining order shall remain in effect, etc., filed. 9/12/70 entered and copies mailed.
September 21, 1970	Defendants' motion to dismiss plaintiffs' complaint and notice, filed
September 28, 1970	Motion of A. Specter to dismiss plaintiffs complaint, filed
Eo. Die.	Argued sur defendants motion to dismiss—Hearing re: Temporary Restraining Order witnesses sworn—continued to November 2, 1970 at 10:00 a.m.
October 8, 1970	Plaintiffs memorandum of witnesses/incidents, filed
November 2, 1970	Hearing re: plaintiffs' motion for issuance of Order to Show Cause and For Contempt Judgment—witnesses sworn
November 4, 1970	Hearing re: motion for judgment of contempt—witnesses sworn C.A.V. Hearing re: preliminary and permanent injunction—witnesses sworn

November 5, 1970	Hearing re: preliminary and permanent injunction—witnesses sworn Hearing continued
November 13, 1970	Answer of Tate, et al., filed
December 1, 1970	Further hearing Re: Preliminary and Permanent Injunction—witnesses sworn
December 2, 1970	Further hearing Re: Preliminary and Permanent Injunction—witnesses sworn
December 3, 1970	Further Hearing Re: Preliminary and Permanent Injunction. Defendants' oral motion to dismiss is denied by the Court.
December 4, 1970	Further Hearing Re: Preliminary and Permanent Injunction
January 4, 1971	Defendants' motion to dismiss action of plaintiffs Black Panther Party and Young Lords Party and Notice, filed
Eo. Die.	Defendants' motion to dismiss action of plaintiff Council of Organizations on Phila. Police Accountability and Responsibility and notice, filed
Eo. Die.	Memorandum of law in support of defendants motion to apply the sanction of dismissal, filed
January 5, 1971	Further hearing Re: motion for preliminary injunction—witnesses sworn. Defendant's motion to dismiss action of plaintiff Council of Organizations on Phila. Police Accountability and Responsibility—Denied. Defendant's motion to dismiss action of plaintiffs,

	Black Panther Party and Young Lords Party—C.A.V.
January 6, 1971	Further hearing re: motion for preliminary injunction—witnesses sworn
January 7, 1971	Further hearing re: motion for preliminary injunction—witnesses sworn
January 19, 1971	Further hearing: Motion for Prelinary Injunction. Oral motion of Mr. Akers for a preliminary injunction—Denied. Findings of Fact within 15 days after final notes of testimony are transcribed
March 8, 1971	Plaintiff's proposed Findings of Facts and Conclusions of Law, filed
Eo. Die.	Plaintiff's proposed Conclusions of Law, filed
Eo. Die.	Plaintiff's motion for reference to a special master, filed
Eo. Die.	Plaintiff's motion to re-open record and affidavit of E.D. Wolf, filed
March 9, 1971	Defendant's proposed Findings of Facts and Conclusions of Law, filed
March 15, 1973	Memorandum FULLAM, J., and Order that the Black Panther Party and Young Lords are stricken from the caption of the case as plaintiffs, and as to those plaintiffs the complaint is Dismissed; the remaining plaintiffs are directed to make appropriate amendments to the caption of the case to reflect changes in personnel; and the defendants are di-

	rected, within 30 days to submit a comprehensive program for improving handling of citizen complaints alleging police misconduct, etc., filed (3/15/73 entered and notice mailed)
March 20, 1973	Plaintiff's (Council of Organizations on Police Accountability, etc.) petition for the allowance of counsel fees and expenses, filed
September 19, 1973	Plaintiff's amended bill of costs, filed
September 24, 1973	Plaintiff's supplement to motion for restitution, filed
October 5, 1973	Memorandum, FULLAM, J., and Order that defendants shall pay plaintiffs in *GOODE* case (C.A. 70-491) counsel fees in the sum of $25,000.00 plus disbursements and costs in the sum of $4,167.58; that defendants shall pay to plaintiffs in the *COPPAR* case (C.A. 70-2430) counsel fees in the sum of $10,000.00, plus disbursements and costs in the sum of $250.00; and that the foregoing Memorandum and this Order shall be filed of record in both cases, filed (10/5/73 entered and notice mailed)
Eo. Die.	Final Judgment setting procedures and directing promulgation of procedures, forms, etc., re investigation of civilian complaints, and setting times for compliance with Judgment, etc., filed (10/9/73 entered and copies mailed)

May 8, 1975	Order, Fullam, J., dated 5/7/75 that letters and enclosures shall be docketed nunc pro tunc as of their respective dates, filed

Goode et al. v. *Rizzo et al.*
COPPAR et al. v. *Tate et al.*

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 72-2023/24/25
Nos. 73-2077/78/79

December 27, 1973	Motion by Appellants for stay of the October 5, 1973 Judgment of the U.S. District Court for the Eastern District of Pennsylvania, pending appeal, filed. (4 cc.). Certificate of Service Attached.
January 11, 1974	Order (*Adams,* Hunter and Weiss) granting appellants' motion for stay of the October 5, 1973 Judgment of the U.S. District Court for the Eastern District of Pennsylvania pending appeal, filed.
January 18, 1974	Order (Clerk) granting motion by Goode, et al., to consolidate appeals in Nos. 73-2023-5 with appeals Nos. 73-2077-9 and motion by cross-appellants to consolidate appeals Nos. 73-2077-9 with appeals in Nos. 73-2023-5
June 10, 1974	Argued. Curam: Staley, Gibbons and Weis, Circuit Judges (Covers 73-2023/5 and 73-2077/9)

Relevant Docket Entries

November 1, 1974	Opinion of the Court (Staley, Gibbons and *Weis*, C.J.), filed. (Covers 73-2023/5 and 73-2077/9)
November 1, 1974	Judgment affirming the judgment of the District Court entered October 5, 1973 as to the injunctive relief; vacating and remanding the award of counsel fees for further proceedings not inconsistent with the opinion of this Court, filed
November 15, 1974	Petition for rehearing by appellants, Frank L. Rizzo, et al., and Honorable James H. J. Tate, et al., filed. (Covers 73-2024/5 and 73-2077/8)
December 6, 1974	Order (Seitz, CH.J., Staley, Van Dusen, Aldisert, Gibbons, Rosenn, Hunter, *Weis* and Garth, C.J.) denying petition for rehearing by appellants, filed. (Judge Adams took no part in the consideration or decision of this petition). (Covers 73-2024/5 and 73-2077/8)
November 25, 1974	Certified judgment in lieu of formal mandate issued (Covers 73-2023 and 73-2079)
December 16, 1974	Certified judgment in lieu of formal mandate issued (Covers 73-2024 and 73-2077)
January 6, 1974	Certified judgment in lieu of formal mandate issued (Covers 73-2025 and 73-2078)

Complaint

COMPLAINT

I. Jurisdiction

1. This is an action arising under 42 U.S.C. § 1983 and 1988 for declaratory, injunctive and other relief to redress the deprivation by defendants, their agents, employees and other acting in concert with them, purportedly acting under State law, statute, ordinance, regulation, custom or usage of plaintiffs' rights, privileges and immunities secured by the Constitution of the United States. Jurisdiction is based upon 28 U.S.C. § 1343. Declaratory and further relief is sought pursuant to 28 U.S.C. § 2201 and 2202. The following rights secured to plaintiffs and the members of the class and the included class they represent by the Constitution of the United States have been and, unless otherwise enjoined, will continue to be violated by the activities of defendants, their agents and employees:

(a) The rights secured by the Due Process Clause of the Fourteenth Amendment to be free from illegal and abusive police practices including the use of excessive force and the imposition by police of summary punishment; and

(b) The rights of the black residents of the City of Philadelphia to Equal Protection of the Laws secured by the Fourteenth Amendment.

II. Plaintiffs and Plantiffs' Classes

2. Plaintiff Gerald G. Goode, a black man and a graduate student at the University of Pennsylvania, resides at 1856 East Tulpehocken Street, Philadelphia, Pennsylvania.

3. Plaintiff Louis J. Reed, a black woman and a teacher at the Carver Elementary School, resides at 1900 John F. Kennedy Boulevard, Philadelphia, Pennsylvania.

4. Plaintiff Herbert Brown, a black man and an employee at Fryes Family Market, resides at 1415 Vodges Street, Philadelphia, Pennsylvania.

5. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The members of the class represented by plaintiffs are the residents of the City of Philadelphia. By virtue of the defendants' practice of authorizing or allowing their agents or employees to employ illegal police practices, including the use of excessive force and the imposition of summary punishment, every member of this class has been and continues to be threatened with imminent deprivation of rights secured by the Fourteenth Amendment to the United States Constitution.

The members of the included class represented by plaintiffs are the black residents of Philadelphia. On information and belief, defendants have authorized or allowed the above illegal practices primarily in the black residential areas of Philadelphia. This deliberate practice violates the rights of the black residents of Philadelphia to the Equal Protection of the Laws, secured by the Fourteenth Amendment to the Constitution of the United States. A large proportion of the included class on behalf of which plaintiffs sue is indigent, unable other than through means of this action to both vindicate and ensure the federally protected rights which plaintiffs assert.

6. The members of the class and the included class on behalf of which plaintiffs sue are so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class and the included class, and the named plaintiffs have a claim typical of the claims of the class and the included class. The named plaintiffs will fairly and adequately protect the interests of the class and the included class.

III. Defendants

7. Defendant James H. J. Tate is Mayor of the City of Philadelphia and is responsible for the conduct of the executive and administrative work of the City and for law enforcement within its boundaries.

8. Defendant Fred T. Corleto is Managing Director of the City of Philadelphia and is charged under Section 5-100 of the Philadelphia Home Rule Charter (hereinafter "Charter") with the exercising of supervision over all activities of those departments whose heads he appoints. Pursuant to Charter Section 3-206, the Managing Director with the approval of the Mayor, appoints the Police Commissioner of the City of Philadelphia.

9. Defendant Frank L. Rizzo is Police Commissioner of the City of Philadelphia and, pursuant to Charter Section 3-404, serves at the pleasure of the Managing Director. He also has duties of supervision and control over activities of the Police Department. Pursuant to Charter Section 5-200(b), the Police Department "shall . . . discipline the Philadelphia Police."

10. Defendant Robert G. Selfridge is Deputy Police Commissioner in charge of the activities of uniformed police and exercises powers of supervision and control over uniformed police officers in the City of Philadelphia.

11. Defendant William Murphy is the Chief of the Highway Patrol and exercises powers of supervision and control over its members.

12. John D'Amico is a police officer who is an agent of and is employed by the City of Philadelphia. He is a member of the Highway Patrol.

13. Anthony DeFazio is a police officer who is an agent of and is employed by the City of Philadelphia. He is a member of the Highway Patrol.

14. At all relevant times, defendants have acted toward plaintiffs and the class and the included class they represent through their agents, officers of the Police Department of the City of Philadelphia, Pennsylvania.

15. At all relevant times, the defendants and their agents and employees were acting under color of the statutes, ordinances, regulations, customs and usages of the Commonwealth of Pennsylvania and of the City of Philadelphia.

IV. The Offenses

16. Defendants have encouraged and permitted Officers D'Amico and DeFazio to use excessive force, to administer summary punishment and to act in a discriminatory fashion to members of the included class.

17. Defendants failed to take adequate disciplinary steps, including dismissal, against Officers D'Amico and DeFazio when their illegal and unconstitutional activities either actually came to their attention or should have come to their attention.

18. Defendants have failed to provide an adequate system of internal police review of incidents between police and members of the class and the included class in which it is alleged that police officers have used excessive force, administered summary punishment or acted in a discriminatory fashion. Without such a system, defendants have been unable to exercise sufficient control over Officers D'Amico and DeFazio, thus enabling them to deprive members of the class and the included class of their constitutional rights.

19. As a result of the foregoing, at least the following illegal and unconstitutional acts by Officers D'Amico and DeFazio have taken place.

The Gerald G. Goode Incident

20. On or about December 1, 1969, in the late evening, Officers D'Amico and DeFazio were assigned to duties as police officers on behalf of the City of Philadelphia within the vicinity of Broad Street and Erie Avenue, Philadelphia, Pennsylvania.

21. On the aforesaid date, plaintiff was a passenger in an automobile driven by Mrs. Michael J. Rotko proceeding north on Broad Street. He was behaving in a lawful and peaceful fashion.

22. On the aforesaid date and at or near said intersection, while stopped at a traffic light, plaintiff Goode remarked to Mrs. Rotko in a voice loud enough to be heard by Officers D'Amico and DeFazio that he believed the officers had no right to "frisk" a black man in the fashion he observed. Plaintiff Goode used no profanity or obscenity in his remark to Mrs. Rotko.

23. In response to this remark and in the absence of any criminal activity whatsoever by plaintiff Goode, Officers D'Amico and DeFazio stopped Mrs. Rotko's automobile, terrifying her, and dragged plaintiff from it, striking him about the face, head, body and limbs using hands, fists, and a blackjack. Then they threatened Mrs. Rotko with arrest and searched her car.

24. As a direct result of this attack, plaintiff Goode suffered multiple injuries to his body including, a lacerated lip, severe contusions and abrasions of his head, face, body and limbs, injury to his teeth and severe shock to his body and nervous system, all of which caused him great pain, suffering and humiliation.

25. Immediately following this incident, plaintiff Goode was arrested and charged with two counts of assault and battery on a police officer and one count each of disorderly conduct and resisting arrest.

26. Immediately thereafter, plaintiff Goode was falsely detained in jail until the next day, December 2, 1969 at approximately 8:00 a.m.

27. Subsequently, the Commonwealth of Pennsylvania moved to dismiss all criminal charges against plaintiff Goode. The motion was granted by the Municipal Court on February 11, 1970.

The Louise J. Reed Incident

28. In October or November of 1967, plaintiff Reed, a black woman, was a teacher at the Carver Elementary School, near 17th and Norris Streets, Philadelphia, Pennsylvania. As she left the school, a fellow teacher, Coleman Clarke, a white man, was stopped by Officer DeFazio in connection with an alleged traffic violation.

29. Plaintiff Reed was accompanied by other black teachers at Carver Elementary School, one of whom was Juanita Crosby.

30. Following the issuance of a traffic summons, Officer DeFazio remarked to Mr. Clarke "You don't have to act like the black pigs who live around here." While in Officer DeFazio's presence, Mr. Clarke related this statement to Miss Crosby and plaintiff Reed. At that time, plaintiff Reed lived in the neighborhood.

31. Plaintiff Reed challenged Officer DeFazio about the remark. He did not deny it; nor did he retract or apologize. Subsequently, she complained to the Police Department about Officer DeFazio's conduct and, as a result, he was suspended for ten days.

32. As a result of the foregoing incident, Officer DeFazio's active racial bias came to the attention of his superiors.

The Clarence Anthony Incident

33. On or about December 7, 1969 (one week after the Gerald Goode incident), Clarence Anthony, then a resident of 624 West Montgomery Avenue, Philadelphia, Pennsylvania, was accused of the rape of a ten year old girl.

34. On information and belief, Officer D'Amico and DeFazio were two of three officers sent to apprehend him. The third officer was black and travelled to the scene separately.

35. Upon arriving at the residence of Mr. Anthony, Officers D'Amico and DeFazio found him already in the custody of the third officer.

36. Officers D'Amico and DeFazio took Mr. Anthony out of the door and onto the street, holding and pushing him in such a way as to provoke resistance on his part. Upon information and belief, Mr. Anthony resisted their efforts and Officers D'Amico and DeFazio used force to subdue him. Once this was achieved, however, and after he was subdued, they beat Mr. Anthony unconscious.

37. Mr. Anthony was taken to a hospital and received medical treatment.

38. Thereafter, he was returned to the Police District at East Girard and Montgomery Streets whereupon he was taken out of the sight of his family into a cell and beaten. From the cell he cried out to members of his family.

39. Later that evening, Mr. Anthony was transported to the East Detective Division, Front and Westmoreland Streets.

The Herbert Brown Incident

40. Later that evening, Mr. Anthony was found hanging in his cell, dead.

41. On or about the early morning of December 2, 1969, shortly after the Gerald Goode incident, plaintiff Herbert Brown, a black man, was attempting to revive a dead battery in his automobile.

42. On or about said date, Officers D'Amico and DeFazio arrested plaintiff Brown on a charge of larceny of an automobile battery.

43. They took him into their possession and although he was not resisting arrest or custody in any manner, beat him with hands and fists about the head and body.

44. All criminal charges against plaintiff Brown were subsequently dismissed.

The Bernard Sisco Incident

45. Bernard Sisco, a black man, residing at 3620 Wallace Street, Philadelphia, Pennsylvania, is totally blind.

46. On or about October 31, 1969 he was arrested and charged with rape and other related offenses.

47. While in custody and without necessity, he was severely beaten by several police officers, one of whom was Officer DeFazio. Mr. Sisco was then charged with several offenses related to an alleged attack by him on the officers.

48. Subsequently, all criminal charges related to the alleged rape were dismissed when the victim testified that she never identified Mr. Sisco as an attacker. The charges related to the alleged attack of the officers were held for action by the Grand Jury.

V. Need for Mandatory Injunction

49. Plaintiffs seek a mandatory injunction from this Court because they cannot obtain adequate redress and protection of rights of the class and the included class by other means.

50. The state procedures do not provide adequate avenues for challenging the kind of police actions complained of herein.

51. Plaintiffs believe that during the last 12 years there have been only a small number of criminal prosecutions against police officers in the City of Philadelphia for the use of excessive force upon a member of the public. No criminal indictment has been obtained against either Officer DeFazio or D'Amico as a result of any of the foregoing incidents.

52. Actions for damages in either a state or federal court usually require more than three years to come to trial and do not comprise an effective restraint upon illegal and unconstitutional police practices.

53. The administrative processes of the City of Philadelphia do not afford relief in such situations.

(a) The Police Advisory Board, which once handled complaints against police, has been disbanded.

(b) No other civilian administrative agency provides effective redress. The Community Relations Division of the Philadelphia Commission on Human Relations, one of the City agencies for processing citizen complaints of police misconduct, ceased to investigate such complaints in February 1969, citing noncooperation and inadequate investigation on the part of the Philadelphia Police Department as major reasons for its withdrawal.

(c) The procedures internal to the Police Department for receiving and handling complaints are not adequate; if complaints are investigated, effective redress for the complaint does not result.

54. Officer DeFazio was suspended in September 1967 for three days upon the complaint of another policeman for characterizing a member of the public as a "Jew bastard." Despite this incident of anti-Semitism and despite the racial incident involving plaintiff Reed, both of which came to the attention of Officer DeFazio's superiors, no effective restraints were placed upon him and he was permitted to remain on active duty in racially sensitive areas, thus permitting the incidents complained of herein.

VI. Relief Requested

Plaintiffs and the members of the class and the included class they represent have suffered, are now suffering and will continue to suffer irreparable injury by virtue of the defendants' acts and practices as set forth above. They have no adequate remedy at law to redress these violations of their constitutional rights other than this suit for declaratory and injunctive relief. No other remedy would offer plaintiffs and the members of the class and the included class they represent substantial and complete protection from a continuation of defendants' policies and practices.

WHEREFORE, plaintiffs pray that this Court:

1. Grant a speedy hearing and prompt disposition of this action according to law.

2. After a prompt hearing of this action according to the law, issue an order declaring that:

(a) The acts complained of herein of defendants, their agents, employees and all those acting in concert with them or at their direction violate the rights of the plaintiffs and the class they represent to be free from summary punishment and from the use of excessive forces;

(b) The acts complained of herein of defendants, their agents, employees and all those acting in concert with them or at their direction violate the rights of the plaintiffs and of the included class they represent to Equal Protection of the Laws secured by the Fourteenth Amendment.

3. After a prompt hearing of this action according to law, issue an order enjoining defendents, their agents, employees and those acting in concert with them, both preliminarily and permanently, from permitting Officers D'Amico and DeFazio to continue as police officers in the City of Philadelphia.

4. After a prompt hearing of this action according to law, issue an order requiring defendants to initiate adequate procedures to assure the following minimum standards:

(a) To receive and maintain at a central location public records of all charges of illegal police activity lodged by private citizens against police officers;

(b) To hold public hearings before the Police Board of Inquiry or similar such body at which time the complainant, and any witnesses he may have, may testify and be represented and at which time he may cross-examine the officers involved and any witnesses called by them; and

(c) To make public the disposition of each case plus a detailed statement of the reasons for that disposition.

5. After a prompt hearing of this action according to law, issue an order in any or all of the forms proposed by counsel for plaintiffs requiring defendants to take measures necessary to ensure that no future illegal activities violative of constitutional rights occur.

6. After a prompt hearing of this action according to law, issue an order retaining jurisdiction of this claim until such time as this Court is assured from the activities of the defendants and their agents that no further interference with the constitutional rights of plaintiffs and the members of the class and included class they represent is threatened.

7. Accord all such other, further or additional relief as may appear to the Court to be equitable and just.

8. Allow the named plaintiffs herein, their costs and reasonable attorney's fees.

PETER HEARN
JACK LEVINE
WILLIAM M. EICHBAUM
F. JOHN HAGELE, III
BARBARA W. MATHER
Attorneys for Plaintiffs

Of Counsel:

PEPPER, HAMILTON & SCHEETZ

Kindly address all notices:

2001 The Fidelity Building
123 South Broad Street
Philadelphia, Pennsylvania 19109

February 17, 1970

DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(b)

The defendants move the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim against defendants upon which relief can be granted in that:

(a) As a matter of law, plaintiffs have no cause of action against any of the defendants for alleged violations of plaintiffs' civil rights;

(b) The doctrine of "respondent superior" has no place under civil rights statutes since only personal involvement is contemplated and, absent such an averment, as in this matter, officials of the City of Philadelphia have no responsibility;

(c) General allegations that alleged offending policemen were under the control and supervision of City officials is not sufficient to bring them under the Civil Rights Statutes;

(d) The named City of Philadelphia officials are not responsible unless they were present or personally directed the alleged acts or cooperated in them;

(e) The defendants are immune from any liability in the exercise of their governmental duties absent a personal involvement.

(f) Non-action by defendants, absent a personal involvement, does not deprive plaintiffs of any rights, privileges or immunities granted by the Constitution of the United States.

(g) The exercise of discretion by local authorities with respect to police recruitment, screening of applicants, training and discipline as well as the method of

police investigation is not a matter for review by the Federal Courts.

WHEREFORE, defendants request Your Honorable Court to dismiss plaintiffs' Complaint.

GEORGE J. IVINS
Deputy City Solicitor

LEVY ANDERSON
First Deputy City Solicitor

EDWARD G. BAUER, JR.
City Solicitor

Attorneys for Defendants

ORDER ALLOWING MAINTENANCE OF CLASS ACTION DATED MAY 12, 1970

AND Now, this 12th day of May, 1970, it is hereby ordered that this action may be maintained as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of all residents of the City of Philadelphia and on behalf of an included class of all black residents of Philadelphia.

JOHN P. FULLAM

J.

CA 70-491

ANSWER OF DEFENDANTS

1. Jurisdiction admitted but it is denied that the defendants have violated any constitutional rights of the plaintiffs nor the class alleged to be represented.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied in part and admitted in part. It is admitted that plaintiffs bring this action on their own behalf and as members of a class. The remaining averments of paragraph 5 are denied generally. Specifically, it is denied that the defendants have authorized or allowed any illegal practices in any areas of the City of Philadelphia including the black residential areas of said City.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Denied in part and admitted in part. It is admitted that the named defendants act through officers of the Police Department of the City of Philadelphia but it is denied that defendants have acted "toward plaintiffs and the included class they represent (alleged)" in any way other than in accordance with their duties and obligations as duly elected and appointed officials of the City of Philadelphia.

15. Denied in part and admitted in part. On the contrary, it is averred that the named defendants acted as

required by the Philadelphia Home Rule Charter and applicable Statutes of the Commonwealth of Pennsylvania.

16. Denied. It is denied that the defendants have encouraged and permitted Officers D'Amico and DeFazio to use excessive force to administer summary punishment and to act in a discriminatory fashion against either the plaintiffs or members of the alleged included class. On the contrary, it is averred that defendants have by official order directed that there shall not be used any excessive force, nor shall any officers administer summary punishment nor shall any officers act in a discriminatory fashion to members of the alleged included class or the plaintiffs themselves, and these directions and orders apply to Officers D'Amico and DeFazio as members of the Philadelphia Police Department.

17. Denied in part and admitted in part. It is admitted that Officers D'Amico and DeFazio have not been dismissed but all other averments of said paragraph are denied. On the contrary, it is averred that the defendants have taken adequate disciplinary steps, where required, against such Officers and it is further denied that such Officers committed any unconstitutional activities in the course of their duties as members of the Philadelphia Police Department.

18. Denied. It is specifically denied that the defendants have failed to provide an adequate system of internal police review of incidents between police and members of the alleged included class. On the contrary, it is averred that a Board known as the Police Board of Inquiry exists for the express purpose of advising the Police Commissioner with respect to violations of any departmental orders which include the deprivation of any citizen's constitutional rights.

19. Denied. It is denied that any actions by Officers D'Amico and DeFazio are illegal and unconstitutional. On

the contrary, it is specifically averred that all acts of aforesaid Officers were in the ordinary and normal course of their duties and that in such instances, where said Officers have been involved in violations of Departmental orders and directives, proper disciplinary action has been taken.

20. Admitted.

21. Admitted.

22. Denied in part and admitted in part. On the contrary, it is specifically averred that plaintiff Goode, at the time and place alleged, took it upon himself to cast aspersions upon said Officers D'Amico and DeFazio who were then and there in the exercise of their proper duties as Officers of the Philadelphia Police Department. It is further averred that said plaintiff Goode shouted at said Officers D'Amico and DeFazio in such manner as to debase their activities and using violently profane language toward them.

23. Denied in part and admitted in part. It is admitted that said Officers stopped Mrs. Rotko's automobile but the remainder of the averments in paragraph 23 are denied. On the contrary, it is specifically averred that plaintiff Goode continued to abuse said Officers verbally and, although informed that he was under arrest, he resisted his removal from the automobile in which he was riding. During his resistance, plaintiff Goode struck Officer DeFazio in the face with his forearm and Officer DeFazio struck Goode once with his blackjack to subdue said Goode and place him under physical arrest. It is further averred that all other physical problems connected with this matter consisted of the pushing, pulling and wrestling with Mr. Goode until he was removed from the vehicle and handcuffs were placed on him. It is denied that Mrs. Rotko was threatened with arrest nor was her automobile

searched as alleged. On the contrary, it is averred that only that part of the automobile in which Goode was seated was searched.

24. Denied in part and admitted in part. It is denied that plaintiff Goode was the subject of any attack and on the contrary, it is averred that whatever resulted from the difficulty was caused by Goode's violent resistance to arrest by said Officers. It is specifically denied that plaintiff Goode suffered the injuries alleged in his Complaint and on the contrary, it is averred that Goode suffered only a small laceration of the upper lip requiring four (4) sutures to close and bruises on the left cheek.

25. Admitted.

26. Denied. It is denied that plaintiff Goode was falsely detained in jail until the next day. On the contrary, it is averred that Goode was detained as a result of a legal arrest and was duly arraigned before a Judge of the Municipal Court of Philadelphia and released on nominal bail pending a hearing.

27. Admitted.

28. Admitted.

29. Denied. Defendants are without information or knowledge as to who accompanied plaintiff Reed nor do they have any information or knowledge as to whether one of such persons was Juanita Crosby. Accordingly, the averments are denied.

30. Admitted.

31. Denied in part and admitted in part. Defendants have no information or knowledge as to the individual actions of plaintiff Reed and accordingly, this averment is denied. Defendants admit that a Complaint was filed with the Police Department about Officer DeFazio's conduct, one of the complaining parties being plaintiff Reed,

but deny that Officer DeFazio was suspended for ten (10) days. On the contrary, it is averred that after a full hearing before the Police Board of Inquiry, at which time Officer DeFazio denied making the statement alleged, he was suspended for two (2) days.

32. Denied. Defendants have been informed, believe and therefore aver that the allegation in paragraph 32 is a conclusion and not an averment of fact and as such a responsive answer is not required.

33. Admitted.

34. Admitted.

35. Denied. It is denied that upon the arrival at the residence of Anthony Officers D'Amico and DeFazio found said Anthony already in the custody of the third officer. On the contrary, it is specifically averred that the third officer had not yet taken Anthony into custody although said Anthony had been identified to the third officer as the alleged rapist.

36. Denied in part and admitted in part. It is admitted that Officers D'Amico and DeFazio took Anthony into custody but the remaining averments of paragraph 36 are denied. On the contrary, it is averred that Officers D'Amico and DeFazio took custody of Anthony at the request for assistance by the third officer (Policeman Conway) but they did not push or provoke resistance on the part of said Anthony. By way of further answer, it is averred that Anthony resisted the efforts of Officers D'Amico and DeFazio to arrest him and he broke free from the Officers and began to run away. At this time Officers D'Amico and DeFazio again apprehended Anthony and they struggled across the street where Anthony punched at the Officers and struck them with an antenna which he broke from the Officers' police car. The Officers then struck Anthony with their blackjacks to stop his

attack upon them. Defendants have been informed, believe and therefore aver that after Anthony was subdued the Officers did not strike Anthony again nor was he unconscious but was able to get into the police wagon with the assistance of the police after being handcuffed.

37. Admitted. By way of further answer, it is averred that Anthony was treated at Saint Luke's Hospital for a laceration of the scalp and was then released by the Hospital into police custody.

38. Denied in part and admitted in part. It is admitted that after treatment at the Hospital, Anthony was returned to the 26th Police District and put in a cell. It is specifically denied that he was beaten in the cell or that he cried out to his family. On the contrary, it is averred that said Anthony was merely kept in custody awaiting further police action by way of being officially charged with the alleged rape.

39. Admitted. By way of further answer, it is averred that Anthony was subsequently transferred to the East Detective Division, Front and Westmoreland Streets, Philadelphia, at about 6:30 P.M. arriving there at 6:50 P.M. for the specific purpose of attempting to interrogate him relative to the alleged rape and to prepare the necessary paper work to send said Anthony to the Police Administration Building for processing of the Complaint.

40. Admitted. By way of further answer, it is averred that Anthony was found dead in his cell a victim of hanging at or about 10:15 P.M. on the day aforesaid. It is averred that Anthony was immediately cut down and transported to a hospital where he was pronounced dead on arrival at 10:45 P.M. An examination of Anthony's body by the Medical Examiners Office was made and it was determined that Anthony's death was caused by suicide by hanging.

41. Denied. It is specifically denied that plaintiff Herbert Brown was attempting to revive a dead battery in his automobile on the early morning of December 2, 1969. On the contrary, it is specifically averred that the said Brown accompanied by a friend of his, one, Herbert Joyner, were underneath the hood of a car which belonged to one Clive Whitcombe, and that said Whitcombe gave no one permission to touch his automobile.

42. Admitted, with the provision that the charge was attempted larceny.

43. Denied in part and admitted in part. It is admitted that Brown was taken into custody but it is specifically denied that the arresting officers beat said Brown in any manner whatsoever.

44. Admitted. By way of further answer, it is averred that the criminal charges were dropped because of lack of prosecution by Whitcombe but defendants have been informed, believe and therefore aver that he did not wish to carry the case any further since he did not lose anything and did not wish to attend the hearing.

45. Admitted.

46. Admitted.

47. Denied. Defendants have been informed, believe and therefore aver that Sisco was not beaten by any police officer while in custody.

48. Denied in part and admitted in part. It is admitted that criminal charges relating to the alleged rape were dismissed but it is denied that the alleged victim never identified Sisco as the attacker. On the contrary, it is specifically averred that the alleged victim admitted that initially she had identified Sisco as one of her attackers but thereafter indicated that she was not sure of the identification. Said change in identification information taking place on November 1, 1969 approximately one (1)

day after the alleged attack. By way of further answer, it is averred that the Complaint which reads "the charges related to the alleged attack of the officers were held for action by the Grand Jury" is incorrect since Sisco was held in nominal bail for the Grand Jury on the charges relating to his assault on the police officer.

49. Denied. Defendants have been informed, believe and therefore aver that paragraph 49 of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

50. Denied. Defendants have been informed, believe and therefore aver that paragraph 50 of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

51. Denied in part and admitted in part. It is admitted that no criminal indictments have been obtained against either Officer D'Amico or Officer DeFazio but the remaining averments of the said paragraph are denied as mere conclusions and defendants have been informed, believe and therefore aver that no further answer is required.

52. Denied. Defendants have been informed, believe and therefore aver that paragraph 52 of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

53. Denied. Defendants have been informed, believe and therefore aver that paragraph 53 of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

53a. Admitted.

53b. Denied. Defendants have been informed, believe and therefore aver that paragraph 53b of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

53c. Denied. Defendants have been informed, believe and therefore aver that paragraph 53c of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

54. Denied in part and admitted in part. It is admitted that Officer DeFazio was suspended in 1967 for three (3) days for characterizing a member of the public as a "Jew bastard". It is specifically denied that the defendants permitted any of incidents complained of to occur and it is averred that the remaining statements of said paragraph are mere conclusions and as such, defendants have been informed, believe and therefore aver no further answer is required.

WHEREFORE, defendants pray Your Honorable Court to dismiss the Complaint on the ground that said Complaint does not state a cause of action against them individually or collectively.

LEVY ANDERSON
City Solicitor

GEORGE J. IVINS
Deputy City Solicitor

AMENDMENT TO ANSWER

SECOND DEFENSE

The Complaint fails to state a claim for relief.

THIRD DEFENSE

The Complaint fails to state a claim for equitable or declaratory relief.

FOURTH DEFENSE

The Court lacks jurisdiction over the claim.

FIFTH DEFENSE

The Court should abstain from interfering with a purely discretionary function or matter of the local executive department.

SIXTH DEFENSE

The disciplining of police officers is a matter of local and state law only and is not a matter properly for this court.

SEVENTH DEFENSE

Plaintiffs have failed to exhaust their administrative, state and other federal court remedies.

EIGHTH DEFENSE

Plaintiffs have failed to join indispensable parties, namely Officers D'Amico and DeFazio, against whom this suit and the prayer for relief is directed.

WHEREFORE, Defendants pray that the Complaint be dismissed with costs to defendants.

GEORGE J. IVINS
Deputy City Solicitor
LEVY ANDERSON
City Solicitor
Attorneys for Defense

COMPLAINT

(Action for Declaratory and Injuctive
Relief Restraining Enforcement
of Illegal State Acts)

JURISDICTION

1. Plaintiffs have been, and unless relief is granted, will continue to be deprived by defendants, their agents and employees, acting under color of State law, of rights and privileges secured by the First, Fourth and Fourteenth Amendments to the Constitution of the United States. Plaintiffs seek preliminary and permanent injunctive relief and a declaratory judgment as to the unconstitutionality of defendants practices. The action is brought pursuant to 42 U.S.C. § 1981, 1982, 1983 and § 1985 and 28 U.S.C. §§ 1331, 1343 and 2201. The amount in controversy exclusive of interest and costs exceeds the sum of $10,000.00.

CLASS ACTION

2. This is a class action brought by the named plaintiffs on behalf of themselves and all other persons and organizations similarly situated. The plaintiffs and other members of the class are Black and White persons residing in the City of Philadelphia and are organizations with offices in the City of Philadelphia, expressing political views contrary to Defendants and advocating police responsibility to the community, who wish to enage in activities supporting their views, and otherwise to exercise rights of free speech, asembly and association protected by the First and Fourteenth Amendments to the U. S. Constitution. Plaintiffs and class they represent are deterred in the exercise of their constitutional rights of free speech, association and assembly, and security in their persons and residences and homes as secured by the

Fourth Amendment of the U. S. Constitution, by the practices of the Philadelphia Police Department in searching persons and residences without cause, arresting persons without cause and other related acts of harrassment and associated practices. The persons who have been subjected to the unlawful and unconstitutional actions of Defendants and their agents are so numerous as to make it impracticable to bring them all before the Court. There are question of law and fact common to the Class. A common relief is sought. The interests of Plaintiffs' class are adequately represented by the plaintiffs.

This class action is also brought by the Black plaintiffs on behalf of themselves and all other Black persons physically situated in the City and County of Philadelphia. The Black plaintiffs and the class they represent are prevented from enjoying their constitutional right of equal treatment under the law as afforded them by the Fourteenth Amendment to the U. S. Constitution by the practices of the Philadelphia Police Department through arrests on suspicion, blanket orders to stop Black males in certain vicinities without further descriptive phrases, beating without provocation, invasion of private meetings of Black groups, requiring identification without probable cause and other illegal practices hereinafter set forth with greater specificity.

PLAINTIFFS

3. The Black Panther Party is an unincorporated association of Black citizens formed for the purpose of organizing Black citizens to secure, protect and defend their full rights of citizenship. Plaintiff Reggie Schell is an officer of the said Black Panther Party, Philadelphia chapter. Individual plaintiffs are Black citizens of the City of Philadelphia, Commonwealth of Pennsylvania and some of them are members of the plaintiff Black Panther Party, Philadelphia chapter.

4. The Southern Christian Leadership Conference is an incorporated association formed by the late Rev. Martin Luther King, Jr. with its principle office in Atlanta Georgia and was formed for the purpose of defending and promoting the rights of Black citizens, and for the purpose of creating and forming a more christian lifestyle in the social and political structure of American life.

5. The Young Lords Party is an unincorporated association of Puerto Rican and Spanish and Chicano persons formed for the purpose of advancing and promoting the rights of the above said minorities and eliminating the prejudice and abuse in American life.

6. The plaintiff Frank Johnson resides at 5236 McKean Ave. Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

7. The plaintiff Karen McNear resides at 5238 McKean Ave., Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

8. The plaintiff Tony Britt resides at 212 South 60th Street, Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

9. The plaintiff Carol Rogers resides at 3506 Powelton Avenue, Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

10. The plaintiff Mary Rouse resides at 2422 North Howard Street, Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

11. The plaintiff Council of Organizations on Philadelphia Police Accountability and Responsibility (COPAR) is an unincorporated association composed of constituent community organizations in the City of Philadelphia; Lay, Ecclesiastical and professional, whose purpose is the

achievement and creation of structural modes of community accountability of the police. The said constituent organizations exceed twenty in number.

12. The plaintiff Walter Perry resides at 428 Queen Lane, Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

Plaintiffs, Thomas Dante, Walter Alfred Williams, Anthony Jones, Herbert Hawkins, Patricia Lucas, Dana Scott, William Brown, Robert Brodis Jones, William Overton, Linda Harber, Reggie Schell, Donna Marie Howell, Joseph T. Saunders, Barbara McGriff, Walter Perry and Robinetta Gladden, are citizens of the Commonwealth of Pennsylvania.

DEFENDANTS

13. The defendants are public officials of the city and county of Philadelphia, Commonwealth of Pennsylvania.

14. The defendant the Honorable James H. J. Tate, is the Mayor of the City of Philadelphia and is a citizen and resident of Philadelphia, and is responsible for the conduct of the executive and administrative work of the City and for law enforcement within its boundaries.

15. The defendant Fred T. Corleto is Managing Director of the City of Philadelphia and is charged under Section 5-100 of the Philadelphia Home Rule Charter (Hereinafter referred to as "Charter") with the exercising of supervision over all activities of those departments whose heads he appoints. Pursuant to Charter Section 3-206, the Managing Director with the approval of the Mayor appoints the Police Commissioner of the City of Philadelphia.

16. The Defendant Frank L. Rizzo is Police Commissioner of the City of Philadelphia and pursuant to Charter Section 3-404, serves at the pleasure of the Managing

Director and the Mayor of Philadelphia. His duties include supervision and control over activities of the Police Department.

17. The Defendant Arlen Specter is the District Attorney for the Commonwealth of Pennsylvania in the county of Philadelphia and is charged with the duty of criminal prosecutions in the city and county of Philadelphia.

FACTS

18. On Saturday, August 29, 1970 two policemen were shot, one fatally. The next day two policemen were wounded when they stopped a stolen car. Police information indicated no connection between the two incidents. However, the shock of these assaults produced hysteria in the Philadelphia police department which then generated panic throughout the Philadelphia community.

By Monday, August 31, 1970, the Police Commissioner, Defendant Rizzo herein declared the Police Department to be in full, "actual warfare" on "barbarians, creeps, yellow dogs, and Black militants."

Plaintiff Black Panther Party has agreed to participate in a Citizens Constitutional Convention, scheduled for the City of Philadelphia commencing September 4, 1970 and continuing through the 5th, 6th and 7th of September 1970, the purpose of the said Convention is to recommend amendments to the Constitution of the United States of America. The participation of all citizens to this Convention has been invited by the convenors thereof. The said Convention is to be held, in part, on the premises of Temple University, in agreement with the appropriate university officials and governing body.

The said Convention has been jeopardized by the actions of the defendants herein as more fully set forth in the averments of this Complaint.

19. Commencing Saturday, August 29, 1970 and continuing to the present time, the defendants, their agents, servants and employees, acting in concert and under color of state law and practice have caused the wholesale arrest of scores of persons, without warrants and without probable cause, and have ordered members of the Police Department to enter, break and enter, search and seize, and trespass upon the property, homes, and residences of citizens of the Commonwealth of Pennsylvania, without probable cause and in violation of the constitution and laws of the United States, the same being Black citizens of this Commonwealth.

20. On or about 6 A.M. on August 31, 1970, members of the Philadelphia Police Department, acting under color of the state law, conducted simultaneous raids on three premises known to said police department to be places where members, associates and allies of the Black Panther Party regularly work and reside. The three aforementioned premises are located at: 2935 Columbia Avenue, 3625 Wallace Street, and 428 Queen Lane, all in the City and County of Philadelphia, Commonwealth of Pennsylvania. These three raids were carried out in violation of the constitutional laws of the United States and were part and parcel of an unlawful and illegal conspiracy and/or undertaking by the defendants, their agent, servants and employees.

21. That the defendants have instituted the systematic practice of arresting Black citizens without warrants and without cause, of offering them the most brutal and degrading indignities such as causing them to remove their cloths and strip naked on the public highway, in violation of their right of privacy and of their right to be secure in their persons and bodies from unreasonable searches and seizures (see exhibit "A").

22. That the defendant Rizzo has openly, brazenly and illegaly threatened the physical extermination and acts of genocide against the Black community and has issued a so-called "challenge" as follows: "If a showdown is what they want, and if they have any guts, they will call me and set it up. We will even give them odds. If they say they'll have 10 men, we'll go with two. Do they have to be cowards? Aren't 5-to-1 odds good enough for them?"

"These creeps lurk in the dark and you never have a chance against them."

23. The searches by the police of homes and residences in the city of Philadelphia on the date in question were, upon information and belief conducted on the basis of unverified anonymous information and without proper and legal search warrants. Citizens of the City of Philadelphia have had their homes broken into by police officers purporting to conduct searches for arms, literature and posters, the said officers being armed and carrying various types of weapons on their persons while making the searches and using tear gas to rout the residents preparatory to making the said searches, which were and are illegal, unlawful and unconstitutional, being in violation of the Fourth Amendment of the United States Constitution.

24. On August 31, 1970 a petition for a writ of habeas corpus was presented in the Court of Common Pleas of Philadelphia County for the release from custody of Thomas Dante, Walter Alfred Williams, Anthony Jones, Herbert Hawkins, Patricia Lucas, Dana Scott, William Brown, Robert Brodis Jones, William Overton, Linda Harper, Reggie Schell, Donna Marie Howell, Joseph T. Saunders, Barbara McGriff, Walter Perry, Robinetta Gladden, all of whom were charged with assault with intent to kill, violation of the Uniform Firearms Act and conspiracy; and all of whom were arrested by the police at

6 A.M. on August 31, 1970. An order for their release upon $500.00 bail was signed by the Hon. Thomas Reed, Judge of the Court of Common Pleas of Philadelphia County. Thereafter, and in a manner contrary to law, custom, usage, practice and in violation of all precepts of Due Process and Equal Protection of the Laws, the said Writ was not honored by the Philadelphia Police Department and the plaintiffs above named were retained, despite the Writ, in unlawful custody and remain so confined. The defendant Rizzo publicly stated: "The Philadelphia Police Department won't tolerate it here, if the Courts and everybody else do." [sic]

25. Following the raids described herein, which produced no evidence pertaining to the previous assaults on police officers, the Philadelphia Police Department, with the approval of the Defendant Tate, Mayor of Philadelphia, instituted the following practices:

(a) In areas principally inhabited by Black Citizens, every Black male is stopped, searched and required to identify himself. No warrants are sought or obtained for this purpose. The searches take place on the public highways, in Black owned stores, on the premises of Black operated businesses;

(b) Black males are arrested on sight, without warrant or probable cause. Some are released in a few minutes, some have been held up to thirteen hours without charges, bail, counsel.

(c) The businesses, residences of Black Citizens are invaded and searched at all hours of the day and night at gunpoint terrifying men, women and children. No warrants are sought or obtained for this purpose;

(d) The Defendant Mayor has purported to authorize house-to-house searches without legal authority.

All of the abovesaid practices continue to the present time and Defendants have declared their intention to continue said practices for an indefinite time.

26. Fourteen members of the Plaintiffs' class were arrested at 6 A.M. on August 31, 1970 and were held without hearing until 7 P.M. At the said hearing, bail in the exorbitant amount of $100,000.00 was demanded of each of the plaintiffs herein, defendants in the State criminal proceeding, said bail was fixed without reference to the offenses charged, the likelihood of their further appearance or any other ascertainable standard or criteria, but was imposed as "preventive medicine" by the Court.

27. Thereafter, upon application for the reduction of excessive bail, the Court of Common Pleas ordered that only one of the fourteen plaintiffs (defendants) would be permitted to apply for reduction of bail each day.

28. The Police Commissioner, defendant Rizzo, has threatened a shootout with a group of persons identified only as "black militants" thereby terrorizing the Black Citizens of the City of Philadelphia and denying them the security of their persons, homes and property.

29. The aboversaid Police commissioner has made further public statements designed to frighten, and "chill", prospective delegates to the scheduled Convention and to silence complaints or expressions of grievance against the government.

30. There is between the parties hereto an actual controversy as set forth above. By reason of the conduct of the Defendants, Plaintiffs and the class of citizens they represent are terrorized; afraid to engage in ordinary commerce, social events and peaceful assembly, and to discuss their grievances. The plaintiffs are suffering irreparable injury thereby, and are threatened with irreparable injury in the future by reason of the acts herein complained of. Furthermore, the chilling effects upon the exercise of First Amendment rights derives from the abovesaid acts of defendants.

31. Upon information and belief, plaintiffs aver that the arrests of the fourteen persons now confined to prison was unlawful in that the said arrests were without warrant and predicated solely upon plaintiffs' resistance to the illegal, unauthorized, and forcible entry into their residences by the police.

32. Plaintiffs have no plain, adequate or complete remedy to redress the wrongs which deny them their rights secured by the First, Fourth, Eighth and Fourteenth Amendments of the United States Constitution and the laws thereof; any other remedy to which plaintiffs and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny them substantial relief, involve a multiplicity of suits and cause further irreparable injury, damage and inconvenience to the plaintiffs and those similarly situated.

33. In the course of these events, and continuing to the present time, the members of the class which plaintiffs represent have been subjected to indiscriminate physical and verbal abuse by members of the Philadelphia Police Department acting pursuant to the orders of the defendants herein, including but not limited to threats, intimidations, harrasments and beatings, all of which have resulted in a fear and pervasive terror throughout the community which has all but brought to a halt the ordinary affairs of life within the community and rendered impossible the daily pursuits of life, liberty and happiness.

34. The Philadelphia Police Department, its individual members, agents and employees of defendants, together with persons unknown to plaintiffs, acting under color of law, have subjected and are subjecting plaintiffs and members of their class to a pattern of conduct consisting of violence, intimidation and humiliation, directed at plaintiffs and members of their class solely on account of

race, in denial of rights, privileges and immunities guaranteed plaintiffs and members of their class by the Constitution of the United States.

35. Said systematic pattern of conduct consists of a large number of individual acts of violence, intimidation and humiliation visited upon members of plaintiffs' class by members of the Philadelphia Police Department, agents and employees of defendants, acting in concert with persons unknown to plaintiffs and under color of law. Said acts of violence, intimidation and humiliation, while carried out under color of law, have no justification or excuse in law, and are instead gratuitous, illegal, improper and unrelated to any activity in which police may appropriately and legally engage in the course of protecting persons or property or ensuring civil order.

36. Despite the fact that they knew or should have known of the fact that this pattern of conduct was and is being carried out by their agents and employees, the Philadelphia Police Department, defendants, have taken no step or effort whatever to order a halt to this course of conduct, to make redress to injured plaintiffs and members of their class, or to take any disciplinary action whatsoever against any of their employees or agents, and defendants have in fact praised and commended their agents and employees, such praise and commendation having the effect of encouraging their agents and employees to continue this pattern of conduct.

37. The Philadelphia Police Department and its individual members, agents and employees of defendants, acting under color of law, continue to subject plaintiffs and members of their class to a pattern of conduct consisting of violence, intimidation and humiliation directed against plaintiffs and members of their class solely on account of race

38. Defendants know or should know of said continuance and are either ratifying it or if not ratifying it, have so lost control over the conduct, practices and policies of their employees and agents, the Philadelphia Police Department and its individual members, as to make effective law enforcement impossible. Thus, plaintiffs and members of their class have suffered and continue to suffer immediate and irreparable injury for which there is no adequate remedy at law.

39. Defendants, acting individually or in concert, under color of law, have for many years directed or permitted and are directing or permitting their agents and employees, the Philadelphia Police Department, to engage in a systematic pattern of conduct, consisting of violence, intimidation and humiliation, directed against plaintiffs and their class solely on account of race, in violation of due process and equal protection of laws guaranteed to plaintiffs and their class by the United States Constitution.

40. Said systematic pattern of conduct consists of a large number of individual acts of violence, intimidation and humiliation visited upon members of plaintiffs' class solely on account of race, by members of the Philadelphia Police Department, agents and employees of defendants, acting under color of law. Said acts, while carried out under color of law, have no justification or excuse in law, and are instead, gratuitous, illegal, improper and unrelated to any activity in which police may appropriately and legally engage in the course of protecting persons or property or ensuring civil order.

41. Plaintiffs and the members of their class have for many years not enjoyed full and equal participation in the political, economic and social affairs of the city of Philadelphia, in derogation of the rights guaranteed them

by the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States. The only way in which plaintiffs and their class can achieve full and equal participation in the political, economic and social affairs of the city of Philadelphia is by peaceful and vigorous exercise of the rights guaranteed them by the First, Fourth, Fifth and Sixth Amendments to the Constitution of the United States.

42. Said pattern of conduct, carried out under color of law by defendants' agent and employees, the Philadelphia Police Department, has resulted and continues to result in the punishment of plaintiffs and their class for, and the attempted deterrence of plaintiffs and their class from, peaceful exercise of the rights guaranteed them by the First, Fourth, Fifth and Sixth Amendments to the Constitution of the United States.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing:

(a) Grant plaintiffs and members of their class similarly situated a temporary restraining order, a preliminary injunction, and upon final hearing, a permanent injunction enjoining defendants, their agents, servants, workmen, and employees, and all persons in concert and participation with them who obtain notice of the order as follows:

(1) From continuing or resuming the practice of making unlawful arrests, detentions, searches of the persons and residences, and causing the public disrobing of the plaintiffs and others similarly situated, because they are of the Black race and/or for their political views and activities, in violation of the First, Fourth and Fourteenth Amendments of the Constitution of the United States;

(2) From continuing the practice of prosecution of the following adult plaintiffs: Thomas Dante, Walter Alfred Williams, Anthony Jones, Herbert Hawkins, Patricia Lucas, Dana Scott, William Brown, Robert Brodis Jones, William Overton, Linda Harper, Reggie Schell, Donna Marie Howell, Joseph T. Saunders, Barbara McGriff.

(3) From the filing of a petition of delinquency in the Juvenile Court of Philadelphia against plaintiff Robinetta Gladden.

(4) From continuing or resuming the practice of harassing, threatening, intimidating, or otherwise interfering with plaintiffs or other similarly situated because they are of the Black race and/or their political views and activities;

(5) Promulgating, publishing, distributing or declaring any so-called "Emergency Proclamation" which will have the effect of vitiating, interfering with, restraining, impeding rights guaranteed by the First Amendment of the United States Constitution, and more particularly from declaring a "limited emergency" in the vicinity of the Revolutionary Peoples Constitutional Convention of September 4, 5, 6, 7, 1970, limiting the size of outdoor gatherings within the City of Philadelphia, pursuant to the authority granted under the Code of General Ordinances § 10-800.

(6) From holding in custody and confinement the plaintiffs above named in ¶ (2) and (3), supra.

(7) From interfering with, impeding, obstructing, harrassing, intimidating or otherwise threatening persons attending, supporting, participating in, doing business with, or engaging in commerce or trade with, or reporting on the said Convention.

(8) From taking any other action against the plaintiffs in connection with protected activities.

(b) To hold a hearing for the purpose of fixing reasonable bail for the plaintiffs named in ¶ (2) and (3), supra.

(c) That pursuant to the Equity power of this Court, an order issue ordering and directing that special Master be appointed receiver of the Police Department of the City of Philadelphia, with full power to direct and control all affairs of that department and its members, in order that law enforcement in Philadelphia not further deteriorate until such time as that department can be so reorganized so as to protect the lives and property of all citizens of Philadelphia equally and impartially without regard to race.

Prayer for Relief

(d) That said special Master be directed to hold public hearings at which plaintiffs, defendants and all other interested members of the public shall have the opportunity to present plans for the rehabilitation of the Police Department, under the supervision of this Court.

(e) That the Court grant plaintiffs their costs and reasonable counsel fees, together with damages for injuries, deprivation of Constitutional rights, the loss, destruction and unlawful detainer of their property including but not limited to office supplies and equipment, cash, personal items, etc., and such other and further relief as may be equitable and proper.

Respectfully submitted,

WILLIAM LEE AKERS
HARRY LORE
Attorneys for Plaintiffs

OF COUNSEL:

Charles R. Garry
501 Fremont Building
341 Market Street
San Francisco, Calif.

William Kunstler
588 Ninth Avenue
New York, New York

Richard A. Axelrod
630 Land Title Building
Philadelphia, Penna.

Peter L. Gale
1020 Robinson Building
Philadelphia, Penna.

Affidavit of Mary Rouse

AFFIDAVIT OF MARY ROUSE

MARY S. ROUSE, of 2422 North Howard Street, Philadelphia, Pennsylvania being duly sworn according to law deposes and says that she is an individual plaintiff in this action and that the averments in the complaint and in the motions for temporary restraining order and preliminary injunction are true and correct to the best of her knowledge and belief; and she does further state that unless the temporary restraining order as prayed for is issued, plaintiff's constitutional rights will be impaired, adversely affected and jeopardized as a result of which they will suffer irreparable injury and damage.

MARY ROUSE

Sworn to and subscribed before me this 31st day of August, 1970.

Notary Public

AFFIDAVIT OF LAFAYETTE BURTON

My name is Lafayette Burton, I live at 3927 Powelton Avenue. I own a house at 1416 N: Wanamaker Street. My wife and I are separated. Only my wife and children reside at the Wanamaker Street address.

On Sunday, August 30, 1970, at 10:30 a.m. a neighbor, Mr. Allen Holmes of 1424 N. Wanamaker Street called me at my Powelton Avenue apartment and told me that the Philadelphia Police had smashed the lock on the front door of my house at N. Wanamaker Street, and entered with drawn guns, flak jackets and shotguns.

I immediately dressed and drove my car to N. Wanamaker Street. As I entered my house I observed the smashed lock on the front door, the torn out molding along the right-hand side of the door jam, and large pieces of plaster from the wall laying on the hardwood floor. There was various items of police equipment laying about my living room (shotguns, flak jackets and uniform caps). My living room looked like a battleground.

I was greeted by about ten police officers, headed by a Captain Donnelly, who as he informed me, was from the North West Detective Division.

My intense anger was rather apparent. I asked Captain Donnelly what he and his men were doing there in my house. He answered "we are conducting a police investigation." I then asked to see the search warrant authorizing them to forcefully enter my house. He said that he didn't have one, and he didn't need one. He then told me that I had a Ruger Single-Action Revolver registered in my name, and asked me if I still had it. I answered "yes, is that what you are looking for?" He said "no."

I then started upstairs to the second floor of the house that I own. Captain Donnelly called me back down and said "there is no need in your going up there and disturbing those men, (the police). I am the one you have to deal with."

I ignored him and continued on upstairs. There were two detectives and two patrolmen going all thru my wife and children's personal possessions. I returned to the first floor and told Captain Donnelly that with no search warrant I demand that he and his men stop their search and leave my house. This time he ignored me. Then two patrolmen came up from my basement where they had been searching, and joined the others who had by this time gathered in the living room.

They all lined up along my couch in the living room holding their flak jackets and shotguns and looking rather sheepish. I asked them what they were looking for and what had they found. I received no answer.

Captain Donnelly then informed me that he was going to take me in for questioning. I asked if he had a warrant for my arrest. He answered no. I then told him that if he just wanted to ask me questions that he could do it here in my house since he had already broken in, and that I didn't want to go "downtown." He said that he was taking me anyway. I told him that if he did I would not cooperate at all with the police and that I would not answer any questions.

Just then my telephone rang and as I answered the kitchen extension the police answered the living room extension. They stayed on the line during the entire conversation. The caller was my 14 year old daughter.

When I hung up, Captain Donnelly called his superiors and told them that he was bringing me in. His superiors told him that it was not necessary for him to bring me in for questioning. Captain Donnelly hung up the telephone and as he and his men prepared to leave I asked him why had he come here in the first place. He said that he was investigating a murder and my name had

turned up. He refused to answer any other questions. He then informed me that a carpenter would be here soon to fix my front door and anything else that was damaged and that a policeman would be stationed outside until the door was secured. As he was leaving, I noticed that the first floor living room window was open. I asked Captain Donnelly if he or any of his men had opened it. He said no. I then asked why they didn't come thru the window, instead of smashing the front door. He said "we don't like to go thru windows. Then they left.

LAFAYETTE BURTON

Sworn to and Subscribed before me this 3rd day of Sept., 1970.

Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires April 9, 1973

AFFIDAVIT OF ROXANNA SMITH

My name is Roxanna M. Smith, a Black mother, residing at 1327 South Ruby Street, in the City of Philadelphia, Commonwealth of Pennsylvania, for the past 34 years.

On Tuesday, September 1, 1970, I received a call from my son David Monroe Smith, 15 years old, that he and some of his friends had undergone an ordeal with the Philadelphia Police Department.

As they were walking down 48th and Fairmount Avenue, after attending a meeting, they were stopped by a patrol wagon, which blasted lights on them. Two police officers jumped out of the car and told the youths to stand up against the wall. They were each searched and told to keep moving.

Before they could get to the corner approximately 15 police cars and patrol wagons' lights were turned on. The police jumped from these vehicles, pistols and rifles in hand. They were thrown against the wall and patted down by several policemen. One of the police officers, who was holding a rifle, told the youths that if they thought what happened to the Panthers when they had to strip in the street was bad, they wouldn't even have the chance to undress, because if one of them even so much as turned around he would "blast all their asses off". One youth was kicked and punched by this same police officer and one youth was smashed in the face with the hat he was wearing.

After this took place, they were told to get off the street and not be seen in that vicinity again. My son went to the home of one of his friends', George Johnson, who was with him at the time of the incident.

My son called me at 12:15 A.M. and asked me to come get him because he was afraid of being stopped in the street again.

ROXANNA SMITH

Sworn to and Subscribed this 3rd day of September, 1970.

My Commission Expires August 17, 1971

AFFIDAVIT OF DAVID WATSON

My name is David Watson. I am 33 years old. I have lived in Philadelphia 27 years. My present address is 5238 McKean Avenue. I have lived there for two years. I am separated from my wife. I have two children aged 13 and 11. I have worked at the Pharmacologist Laboratories at 4901 Stenton Avenue for the past 11 months as a department head for the distribution area.

At 5:45 Monday morning, August 31, 1970, I awoke at home to shouting in front of my house. I went to the window and saw the police on Queen Lane. One policeman shouted, "Get down and stay behind the car," and another shouted, "Shine the light on the second floor." The building I live in is on the corner of McKean and Queen Lane, and my apartment is on top of the Black Panther office at 428 Queen Lane.

From the window I saw two officers behind squad cars with rifles or shotguns. I saw lights which were shining over the whole building. The police were shining them from the cars. I ducked back from the window and got our son Roland out of his bed and put him in the bed with Vivian, Vivian Ayers. I heard the noise of the police breaking into the Panther Party office, two floors below, on the street level. I heard the windows breaking and vibrations through pipes which sounded like they were throwing things around and against the pipes. I was up the whole time, crawling around on the floor and looking out of the window.

During the time the police were behind the cars, five minutes after they first pulled up but before they entered the building, a policeman yelled, "Why don't we shoot into the second floor." (I live on the second floor.) Nothing happened. Someone up on the third floor put on a light; the police told them to leave the light on and not pull the

shades. The police told the same thing to people on the first floor who had also turned on a light.

I was on the floor looking out the window the majority of the time. I saw the police go into the office. They broke the window and walked in. I saw and heard the policeman say, "Let's shoot into the second floor window."

There were two sets of officers doing this. The first set had six squad cars and two vans. They came up, broke in, they talked with someone on the radio who told them to go to Columbia Avenue (I heard this over the radio from my window). The police on the outside of the cars and they had probably turned the radios up. The first set were there until 6:15 or 6:20. They were inside the building for thirty to thirty-five minutes. When they got ready to leave, one of the officers yelled, "All right guys, let's saddle up." They left one van and a squad car behind.

Within minutes after the first set of police left, another van and four squad cars and one plain car arrived. They proceeded to go into the Panther office. About 8 o'clock, a sanitation truck came and the police loaded furniture, clothing, and three boxes with paper in them from the Panther office onto the truck. I didn't see any people taken out.

At 8:15 I left the house and walked across the street to the cleaners. The police were still loading the sanitation truck with stuff from the office and directing traffic. I went to work. At noon I came back and saw a squad car on the street and two men boarding up the windows of the Panther office.

DAVID WATSON
September 2, 1970

WITNESS

Affidavit of Vivian Ayers

AFFIDAVIT OF VIVIAN AYERS

My name is Vivian Ayers. I live at 5238 McKean Avenue, Philadelphia. I have lived there almost seven years. I am divorced. I work at Comprehensive Group Health Services, 2539 Germantown Avenue. I have worked there for eight months as a secretary. My home telephone number is VI 8-3235.

I awoke about 5:45 Monday morning, August 31, 1970, to hear car doors slamming and to see floodlights coming in the bedroom window. David Watson then explained to me to lay still, because the police were outside, with guns. He had gotten up and looked out the window. We put our baby in bed with us. I then heard someone say, "Let's fire into the second-floor window." But no one did. At that point we remained silent and still and heard them break into the Black Panther office, which is almost directly under us at 428 Queen Lane. I know it was the Black Panther office because once I got up and looked out the window. He waited until we felt it was safe to get up and that was when we realized that there was no shooting and there was so much noise that it sounded as if they were actually tearing down the whole office. We could hear glass breaking, even some of the pipes in our apartment were shaking because they connect the whole building. We got up and we both got ready for work and we got the baby ready for the babysitter. And one last quote from the police: "Okay, guys, let's saddle up."

In the process of getting dressed we saw the police coming and going from the Panther office.

I saw a policeman and two men in workmen's clothing throw furniture, fabric like clothing, papers, into an empty city truck which had "City of Philadelphia, Department of Sanitation" printed on it.

Affidavit of Vivian Ayers

When we were out on the street getting into the car to go to work, we saw them talking to the Father at the Catholic Church across the street, St. Catherine's, and to the manager of Lido Cleaners, also across the street.

It was about an hour that they were in the office making noise, breaking things up.

It was about 8:00 a.m. that we left for work.

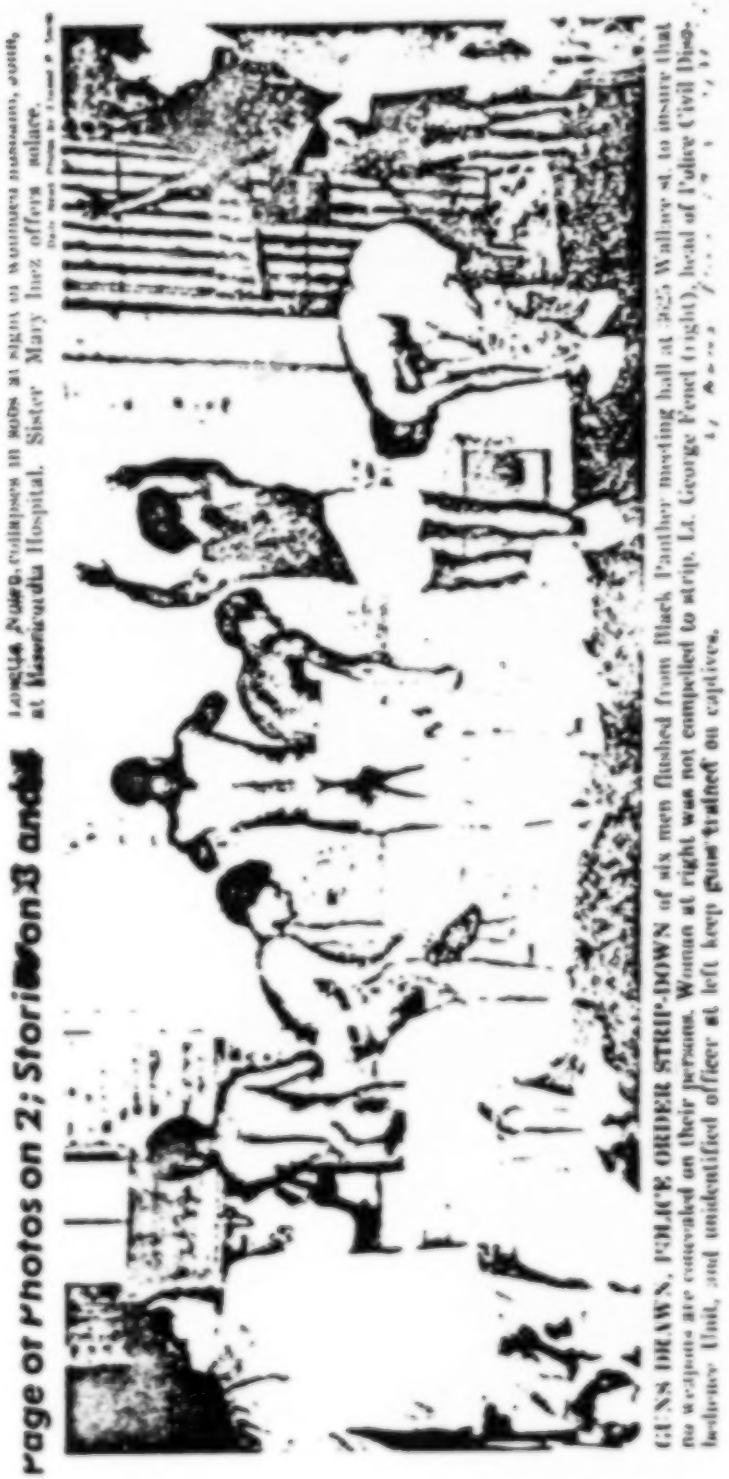
September 2, 1970

VIVIAN AYERS

HOLLY WRIGHT
Witness

BEST COPY AVAILABLE

Exhibit to COPPAR Complaint



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GUNS DRAWN, POLICE ORDER STRIP-DOWN of six men flushed from Black Panther meeting hall at 3625 Wallace st. to insure that no weapons are concealed on their persons. Woman at right was not compelled to strip. Lt. George Fencl (right), head of Police Civil Disobedience Unit, and unidentified officer at left keep gun trained on captives.

Defendants' Motion to Dismiss Plaintiffs' Complaint

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Defendants move the Court to dismiss the plaintiffs Complaint on the following grounds:

1. Plaintiffs' cause of action is moot because the Citizens' Constitutional Convention convened by the Black Panther Party was held without incident at Temple University, Philadelphia, Pennsylvania, on September 5, 6 and 7, 1970, and the delegates to the Convention came and went without police harassment and no "emergency proclamation" was declared.

2. Plaintiffs have failed to state a cause of action in that plaintiffs are not entitled to an injunction interfering with criminal proceedings in the Pennsylvania State Court.

3. Plaintiffs have failed to state a cause of action in that the Federal District Court cannot act as a Receiver or Trustee of the Philadelphia Police Department.

GEORGE J. IVINS
Deputy City Solicitor

LEVY ANDERSON
City Solicitor
Attorneys for Defendants

ANSWER OF TATE, RIZZO AND CORLETO

First Defense

1. Paragraph 1 is denied.

2. Paragraph 2 is denied.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in Paragraph 3 and, accordingly, this Paragraph is denied.

4. Paragraph 4 is admitted.

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in Paragraph 5 and, accordingly, this Paragraph is denied.

6. Paragraphs 6, 7, 8, 9, 10 and 12 are admitted.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in Paragraph 11 and, accordingly, this Paragraph is denied.

8. Paragraphs 13, 14, 15, 16 and 17 are admitted.

9. Paragraph 18 is admitted in part and denied in part. It is denied that police information indicated no connection between the two incidents, and it is further denied that the assault abovementioned produced hysteria in the Philadelphia Police Department which generated panic throughout the Philadelphia community. As to the averments concerning the Black Panther Party's participation in a Citizens Constitutional Convention the defendants are without knowledge or information sufficient to form a belief as to the truth of the averments and the same are denied. It is further denied that any actions by defendants have jeopardized the aforementioned Convention.

10. Paragraph 19 is denied.

11. Paragraph 20 is admitted in part and denied in part. It is admitted that on or about August 31, 1970 members of the Philadelphia Police Department conducted search and seizure operations at the 3 premises mentioned in plaintiffs' Complaint. The remaining averments of the Complaint in paragraph 20 are denied.

12. Paragraph 21 in denied.

13. Paragraph 22 of the Complaint is admitted in part and denied in part. The averments attributed to defendant Rizzo are admitted. All other averments are denied.

14. Paragraph 23 in denied.

15. Paragraph 24 is admitted in part and denied in part. It is admitted that those persons mentioned in Paragraph 24 of plaintiffs' Complaint were arrested. All other averments of said paragraph are denied.

16. Paragraph 25 of the Complaint is denied.

17. Paragraph 26 is admitted in part and denied in part. It is admitted that fourteen(14) persons were arrested on August 31, 1970 and thereafter received a hearing, at which time they were held in bail in the sum of $100,000 each. As to the remainder of the averments of the said paragraph, defendants are without knowledge or information sufficient to form a belief as to the truth of the same and, accordingly, they are denied.

18. Paragraph 27 is admitted.

19. Paragraphs 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 of the Complaint are denied.

Second Defense

The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The Complaint fails to state a claim for equitable or declaratory relief.

FOURTH DEFENSE

The Court lacks jurisdiction over the claim.

FIFTH DEFENSE

The averments in plaintiffs' Complaint and requests for relief are now either moot or not within the jurisdiction of the Court over the subject matter.

SIXTH DEFENSE

Plaintiffs have failed to exhaust their administrative, state and other Federal Court remedies.

WHEREFORE, defendants pray that the Complaint be dismissed with costs assessed against the plaintiffs.

GEORGE J. IVINS
Deputy City Solicitor

LEVY ANDERSON
City Solicitor
Attorneys for Defendants

OPINION

FULLAM, *J.* March 14, 1973

In two separate but related civil rights actions, certain individuals and groups, acting on behalf of minority citizens and residents of Philadelphia, seek various forms of relief against the Mayor and police officials of the City, on the basis of alleged widespread violations of the constitutional rights of minority citizens, by the police of the City of Philadelphia.

From a procedural standpoint, the record in these cases is somewhat anomalous: plaintiffs and their respective counsel are different in the two cases, and have proceeded independently. However, both groups of plaintiffs purport to act on behalf of essentially the same class of plaintiffs. Although the specific relief sought in each case is different, both sets of plaintiffs urge that a pattern of unconstitutional behavior on the part of the police is shown by their evidence of numerous specific instances of such alleged misconduct; each group relies upon a different set of specific instances as examples alleged to establish the pattern. Since I have heard all of the evidence in both cases, it would be difficult, and in my opinion improper, in view of the nature of the claims, to dispose of each case separately, based upon its own limited record. The defendants in both cases are essentially the same, and are represented by the same counsel in both cases.

This Court's disposition of these cases has already been delayed too long. Much of this delay is squarely the responsibility of the Court, and is attributable to other pressing demands of its case load. In partial justification for this unfortunate delay, it may be noted that the records of the two cases are extremely complex, the issues involved are subtle and somewhat novel, and the re-

quired decisions touch upon sensitive and emotion-filled aspects of community life.

Another factor requires mention. During the pendency of these two actions before the undersigned, a third case filed by different plaintiffs on behalf of the same class of plaintiffs, seeking similar relief, was pending before another member of this Court. That case, which was instituted after the *Goode* case but before the *COPPAR* case, eventuated in a consent decree granting injunctive relief, dated December 18, 1972. The defendants in all three cases are essentially the same, and all have been represented throughout by the City Solicitor's office. Nevertheless, at no time have defense counsel meaningfully addressed themselves to the class action issues involved, nor to questions of *res judicata* or collateral estoppel which may be involved.

A brief summary of the issues in all three cases will provide a starting point for analysis: In the *Goode* case, Civil Action No. 70-491, plaintiffs contend that certain police officers of the City of Philadelphia are biased against Negroes and other minority groups, and habitually violate their legal and constitutional rights in the course of carrying out their police duties; that the proclivities of these officers are well known to their superiors in the Department; that the persons in control of the supervision of the Police Department, by failing to take appropriate disciplinary action, have condoned these illegal and unconstitutional activities, as a matter of policy. Plaintiffs further contend that there is no adequate machinery for dealing with civilian complaints against the police, and that departmental resistance to the creation or implementation of adequate complaint procedures justifies the conclusion that it is the policy of the Department to condone racially discriminatory actions by the police. Plaintiffs seek two kinds of relief in this action: removal or other appropriate disciplinary

action in the cases of certain named policemen; and establishment of appropriate machinery to deal with civilian complaints against police.

The COPPAR plaintiffs (Civil Action No. 70-2430) allege widespread and systematic violations of the constitutional rights of Negroes and other citizens by the police in the routine performance of their duties, with the express or tacit approval of their superiors. Plaintiffs ask the Court to appoint a "receiver" or similar official to supervise the Police Department (presumably, sweeping injunctive relief, and the appointment of a master to supervise enforcement of the decree), to prevent further violations. This case was originally precipitated by certain incidents involving police raids on buildings thought to be occupied by members of the "Black Panther" Party, threatened interference with a proposed convention of that group of the City, and the alleged holding of certain black militants without probable cause and in excessive bail. At an earlier stage, this Court entered a temporary restraining order which alleviated some of the immediate problems; eventually, this order expired by its own terms, and has not been renewed.

The plaintiffs in *Goode* presented evidence of ten specific instances of alleged violations, together with a mass of evidence, including expert testimony, dealing with the alleged inadequacies of existing complaint procedures; the defendants produced some countervailing evidence on both subjects. The *COPPAR* plaintiffs produced evidence relating to some 30 additional specific instances of alleged misconduct, and a limited amount of evidence challenging the complaint procedures; the defendants presented evidence to the contrary in most, if not all, of the instances alleged.

In the third action, *Alexander, et al.* v. *Rizzo, et al.*, Civil Action No. 70-992, the principal charge of discrimi-

nation against blacks alleged in the complaint was the practice of widespread arrests "for investigation," and incidental indignities related thereto, apparently triggered by a particular incident involving the murder of a Philadelphia police officer. The injunctive decree in that case which was entered "without hearing or trial and upon the stipulation of the parties" embodies detailed provisions governing police contacts with civilians based upon less than probable cause for arrest.

The Court's findings of fact are set forth below. They reflect evaluations of credibility which give appropriate weight, on the one hand, to the anti-police bias of many of the complaining witnesses, and their emotional involvement in the incidents, and, on the other hand, to the natural reluctance of the accused officers to concede any misconduct on their part. Whenever the merits were substantially in doubt, the defendants were accorded the full benefit of the presumption that the police officers acted properly.

I. FINDINGS OF FACT

A. *General*

During the period covered by the evidence produced at the hearings in these cases, James H. J. Tate was Mayor of Philadelphia, and Frank L. Rizzo was Police Commissioner. Mr. Rizzo is now the Mayor.

During the same period, Fred T. Corleto, was Managing Director of the City of Philadelphia; Hillel S. Levinson is now the Managing Director. Under § 5-100 of the Philadelphia Home Rule Charter, the Managing Director is charged with responsibility for supervising all activities of those departments the heads of which are appointed by him. Under § 3-206 of the Charter, the Managing Director, with the approval of the Mayor, appoints the Police Commissioner.

The Police Commissioner, under Charter § 3-404, serves at the pleasure of the Managing Director. He has responsibility for supervision and control over activities of the Police Department. Charter § 5-200(b) provides that the police Department "shall discipline the Philadelphia police."

Defendant Robert G. Selfridge is Deputy Police Commissioner in charge of the uniformed forces of the Police Department. Defendant William Murphy is Chief of the Highway Patrol and exercises supervision and control over its members. The chain of command within the Highway Patrol is: Captain, lieutenant, sergeant, and patrolman.

During the period covered by the evidence, Anthony Defazio was a police officer of the City of Philadelphia, having been appointed on December 28, 1965. He served as a member of the Highway Patrol. Shortly before the conclusion of the hearings in these cases, he was retired on disability, and is no longer an active policeman.

John D'Amico is a Philadelphia police officer, a member of the Highway Patrol, having been appointed to the Department on June 26, 1967.

B. *Existing Complaint Procedures*

As a general practice, no record is made by the Police Department of any civilian complaints, unless submitted in writing. There are no forms available to citizens for filing such complaints. When a written complaint is filed, it is supposed to be recorded by the police on a "complaint and incident report" form (No. 75-48); but the general practice at the district level is not to record such complaints.

When a complaint has been recorded, an investigation is made by Police Department inspectors assigned to Staff Inspection Headquarters. The investigation in-

cludes obtaining a statement of the complainant and the officers involved. The Police Department controls the investigation and does not assist the complainant in obtaining witnesses. The tendency is to minimize, and seek avoidance or withdrawal of complaints.

Police officers accused of misconduct do not submit to interviews or give statements relating to the charges to anyone other than the police investigators.

Police officers accused of misconduct never submit to polygraph tests. While there is no departmental regulation on the subject, the Fraternal Order of Police has a fixed policy of refusing to lend its support or provide counsel for any police officer who submits to a polygraph test, and this policy is well-known to the Police Department. In consequence, as above stated, police do not submit to such examination. Nevertheless, complainants against police officers are frequently requested to, and do, submit to polygraph examinations, unaware that the accused officer will not be so examined. No records are kept of the manner in which the polygraph test is administered; only a result is noted.

When an officer is under investigation, his personnel file is usually examined. Commendations from the Commissioner and commendatory letters from citizens are always placed in an officer's personnel file. Letters of complaint are not. If an officer has been brought before a police board of inquiry, that fact is noted in his personnel file. If there are several such instances, some further investigation as to the basis for the previous board of inquiry contacts is usually made.

The investigators prepare a report for the Police Commissioner. Previous incidents of alleged misconduct are not mentioned in the report, unless there are several of them and they have been investigated.

The Commissioner decides, in his sole discretion, whether an officer should face trial before the Police

Board of Inquiry for a violation of the Police Department Disciplinary Code. It is generally believed within the Department that the Commissioner refers cases to a board of inquiry for trial only if he is already convinced that the accused officer is guilty and should be disciplined.

A board of inquiry consists of three police officers. The complaint is presented by a police "advocate" at a trial-type hearing. Upon a finding of guilty, penalties (reprimand, suspension or dismissal) are recommended to the Commissioner. The final decision with respect to imposition of penalties rests with the Commissioner. Dismissals are reviewable by the Philadelphia Civil Service Commission.

Counsel for the complainant (other than the "police advocate") is not permitted to participate in the hearing before the Board of Inquiry. Accused police officers are represented by counsel.

The entire departmental disciplinary procedure is directed primarily to violation of departmental rules and regulations, rather than to alleged violations of legal or constitutional rights of civilians.

For the most part, a civilian complainant against a police officer is not informed of the final disposition of his complaint.

C. *Commission on Human Relations*

The Philadelphia Commission on Human Relations is an independent commission established by § 3-100(e) of the Philadelphia Home Rule Charter. Its powers and duties are to ". . . enforce all statutes and ordinances prohibiting discrimination against persons because of race, color, religion or national origin . . ." and to ". . . conduct educational programs to promote the equal rights and opportunities of all persons regardless of their race, color, religion or national origin" (Charter § 4-700).

The Commission receives complaints from citizens alleging misconduct by the Philadelphia Police, but the Commission has no investigatory or enforcement powers with respect to such complaints.

Until mid-1969, the Commission would forward such complaints to the Police Department, the Department would investigate and report the results of its investigation to the Commission; and the Commission would advise the complainant of these results. Beginning in mid-1969, the Police Department terminated its practice of providing the Commission with a report of the investigation; instead, a summary was provided. The Commission thereupon terminated its practice of handling citizen complaints against police. Instead, it directs complainants to other agencies, such as Philadelphians for Equal Justice, Community Legal Services, the American Civil Liberties Union, or the District Attorney's office.

D. *Police Advisory Board of Philadelphia*

The Police Advisory Board of Philadelphia was an agency established in 1958 by the then Mayor of Philadelphia, to hear complaints by citizens against Philadelphia police involving alleged violations of constitutional rights or other mistreatment. The Board then made recommendations to the Mayor in each case.

In March of 1967, the Court of Common Pleas of Philadelphia enjoined the Board from further functioning, and the Board became inactive. The Supreme Court of Pennsylvania reversed the lower court decision in June of 1969. On December 22, 1969, the Board was dissolved by Mayor Tate. During the period of its operations, the Board had no investigative resources, and relied primarily on the investigations made by the Police Department. Because of uncertainty as to whether the Board had subpoena power, it never attempted to exercise such power.

E. *Criminal Prosecution of Police Through District Attorney's Office*

The District Attorney is responsible for the prosecution of all persons charged with crimes, as defined by local and state law, within the City of Philadelphia. The Community Rights Division of the District Attorney's office is responsible for prosecuting police officers charged with having committed crimes against citizens.

Complaints received by the District Attorney's office are sent to the Police Department for investigation. A report is returned to the District Attorney, who then decides whether or not to prosecute.

In many cases where a complaint is made against a police officer, criminal charges arising out of the same incident are pending against the complainant. The District Attorney also has responsibility for prosecuting the complainant. In many cases, the same Assistant District Attorney may be responsible for some aspects of both prosecutions.

Prosecutions of police officers do not occur unless serious physical injury has been sustained by a citizen as a result of police action. Often, complaints against police are dropped in exchange for a dismissal of criminal charges against the complainant.

The District Attorney's office does not ordinarily communicate to the claimants its decision not to prosecute the police officer.

F. *Goode Case*

The plaintiffs in this case are black citizens of Philadelphia who claim that their constitutional rights have been infringed by the conduct of Philadelphia police; they bring their action on behalf of themselves and all other citizens of Philadelphia whose constitutional rights have been or are likely to be thus infringed.

I make the following findings of fact concerning the specific instances alleged:

1. *Roy Lee Shaw.* On March 10, 1969, Roy Lee Shaw, a 16-year old black male, was arrested and charged with assault and battery on a police officer, resisting arrest and disorderly conduct.

On that date, at about 2 p.m., Shaw walked out of a store located at the corner of 11th and Somerset Streets. Officer DeFazio of the Highway Patrol, who was patroling the area in an unmarked car, observed Shaw. He drove around the block, proceeded south on 11th Street (a one-way street for northbound traffic), parked his car adjacent to where Shaw was walking, got out of his car and told Shaw to stop. Shaw turned and asked why he was being stopped, whereupon DeFazio struck him on the head with a blackjack. Shaw then struck DeFazio on the chin, and ran north on 11th Street. DeFazio drew his service revolver and fired a shot in the general direction in which Shaw was running. Shaw then stopped, DeFazio placed one handcuff on him, and pulled him, struggling, back to the police car. DeFazio shoved Shaw into the car and called for additional police help. Shaw was lying face down on the back seat of the police car, still struggling, and DeFazio then struck him with his nightstick. Two other officers arrived on the scene, and additional blows were struck, until they succeeded in placing both handcuffs on Shaw and placing him in a police wagon.

A crowd, mostly blacks, was attracted to the scene by the commotion. As the officers left, DeFazio made various racially derogatory remarks to the crowd.

Shaw was transported to the headquarters of the 25th Police District, where he was again struck by police nightsticks. His mother attempted to visit him, but was not permitted to see him while he was at the district office.

Eventually, Shaw was transported to Episcopal Hospital and received medical treatment. A cut on his head required four stitches. After receiving medical treatment, Shaw was taken back to the 25th Police District and held for approximately two more hours, whereupon he was released in the custody of his mother.

On June 11, 1969, Shaw was initially adjudicated delinquent in Juvenile Court proceedings, but was released without probation. The next day, the disposition of the case was changed to "discharge as to offense."

There was no basis for stopping Shaw in the first place, there was no probable cause to arrest him, and his arrest was illegal. He did not assault DeFazio, nor was he guilty of disorderly conduct; he merely made minimal efforts to defend himself and to protest the violation of his rights.

Neither Shaw nor any member of his family made any complaint to the Police Department or any other City official concerning this matter. Shaw did bring the matter to the attention of Community Legal Services; a staff attorney of that organization wrote to the Community Relations Service of the United States Department of Justice describing the incident, but received no reply.

2. *Gerald G. Goode.* On December 1, 1969, at about 11 o'clock p.m. or midnight, Gerald G. Goode, a 25-year old black graduate student at the University of Pennsylvania, six feet one inch tall and weighing approximately 200 pounds, was a passenger in an automobile driven by Mrs. Ruth Rotko, a white woman, the wife of an Assistant District Attorney of Philadelphia. They were proceeding north on Broad Street. Mr. Goode was sitting in the right rear seat and was the only passenger.

Near the intersection of Broad Street and Erie Avenue, while their car was stopped for a traffic light,

Mr. Goode noticed police officers DeFazio and D'Amico frisking a black man nearby. Mr. Goode rolled down the car window and called to the officers that they had no right to do what they were doing, and that they should leave the man alone. At that time, the officers were approximately 25 feet away from the car, and within hearing range of Mr. Goode's remarks. Mr. Goode did not use profanity or make any personally derogatory remarks.

The traffic light then turned green, and the Rotko car proceeded north for several blocks, until overtaken and stopped by D'Amico and DeFazio, who gave chase in an unmarked police car. Both officers proceeded to the passenger side of the Rotko car, and one of them called to Mrs. Rotko to produce her identification cards. DeFazio ordered Goode to get out of the car. When Goode did not promptly comply, DeFazio opened the unlocked front door of the car, reached through and unlocked the rear door, and opened it. He struck Goode on the knee with a blackjack and yanked him out of the car by his coat. The officers then turned Goode around against the car and patted him down.

Goode demanded to know why he was being subjected to this treatment, but received no reply. The officers attempted to place handcuffs on him, and he swung his arms in an attempt to avoid the handcuffs.

As Goode was being pulled from the car and turned around, he stepped on the foot or bumped the leg of Officer D'Amico.

After being frisked, Goode turned and again asked for an explanation for the police action, whereupon Officer DeFazio struck him across the cheek and mouth with a blackjack, cutting his lip. Angered by this treatment, Goode told the officers to "get your fucking hands off me".

After handcuffing Mr. Goode and placing him in the police car, the officers returned to the Rotko car and

asked Mrs. Rotko for her driver's license and registration card. Officer D'Amico searched the back seat and rear interior portion of the car. Both officers inquired of Mrs. Rotko as to the basis of her acquaintanceship with Mr. Goode. Mrs. Rotko was given a ticket for failing to have her driver's license in her possession, and there was some suggestion that they might arrest her too.

In explanation of their arrest of Mr. Goode, Officer D'Amico stated "you can't use profanity with an officer."

Mr. Goode was taken to a police station and detained in a cell for approximately two hours. He was then taken to Episcopal Hospital, where he received several stitches in his lip and a tetanus shot. He was then reurned to the police station and, at approximately 5 a.m., was taken to the Police Administration Building at 8th and Race Streets, where he was fingerprinted and photographed. At approximately 9 a.m. the next day he was brought before a magistrate on charges of assault and battery on an officer, resisting arrest, and breach of the peace, and was released on nominal bail. On February 11, 1970, all charges against Mr. Goode were dismissed, upon the joint motion of the Commonwealth and Mr. Goode's attorney.

The Police Department conducted an investigation into the conduct of D'Amico and DeFazio in this matter; the investigation was under the supervision of staff inspectors Ditmer and Fragassi.

Statements were taken from the persons directly involved and from five witnesses, and a report summarizing the statements was compiled. The personnel records of the officers were checked. DeFazio's personnel record at that time showed one previous suspension and two appearances before the Police Board of Inquiry. No further check into the backgrounds of the officers was made, nor was DeFazio's prior record referred to in the report.

The statements obtained by the investigating inspectors were essentially in accord with the facts set forth

above. The statements of Officers D'Amico and DeFazio (neither of whom testified in the present case) asserted that Goode had used profanity in his initial comments to them and that he was unruly and boisterous after they stopped his car.

The inspectors expressed the conclusion that Mr. Goode's initial comments to the officers constituted probable cause for his arrest; that only reasonable force was used: that the officers were not unduly rude to Mrs. Rotko; and that, in summary, there was no basis for disciplinary action against either officer.

In finding that there was probable cause for the arrest of Mr. Goode, the inspectors adopted the interesting reasoning that Mr. Goode's initial comments must have created probable cause for his arrest, otherwise the officers would not have pursued the Rotko car so vigorously.

On the basis of the undisputed and admitted facts, it is entirely clear that there was no probable cause for arresting Mr. Goode, and that the conduct of the police was in flagrant violation of the law and the Constitution.

3. *The Ballow Incident.* On June 20, 1970, at approximately 7:45 p.m., Officers Frederick Morse and John D'Amico observed a black male operating a motorcycle which did not have registration plates. The man refused to stop at their request, whereupon they gave chase in their police car. Eventually, the man fell off the motorcycle, and escaped on foot, the officers in pursuit.

The officers concluded that the person sought had entered a house at 2337 N. Howard Street. As the officers arrived at that address, a crowd of approximately 20 people, mostly black, gathered in the street.

Juanita Ballow and one Carlos Edney resided at that address. Plaintiffs' testimony was to the effect that

Officer D'Amico ran into the house, passed Miss Ballow, went up to the second floor, came back downstairs and then told Miss Ballow that he was chasing someone. The defense version was that the two officers stopped at the door of the house, where they were confronted by Miss Ballow and Mr. Edney. For present purposes, this discrepancy need not be resolved.

It appears to be undisputed that, when Miss Ballow and Mr. Edney demanded to know what the police wanted, Officer D'Amico drew his service revolver and threatened to shoot Miss Ballow. Officer Morse summoned assistance, and an additional police officer arrived. D'Amico broke the glass in the front door of the house with his nightstick, and the three officers entered the house. Mr. Edney was standing inside in the hallway, with a wrench in his hand. After a brief discussion with Officer D'Amico as to the officers' purpose, a scuffle ensued. When D'Amico again threatened to use his revolver, Edney escaped out the back door.

The officers searched the upper floors of the house, but did not find the man they were originally looking for. The officers emerged from the front of the house, and Carlos Edney, who had come around from the back of the house, again asked what they were doing, and made a derogatory remark to D'Amico. D'Amico pushed Edney against a parked car and handcuffed him.

As Carlos Edney was being handcuffed, his brother, Frederick Edney, arrived on the scene, ran up to D'Amico and asked him what Carlos was being arrested for. Allegedly because Frederick seemed to be reaching into his pocket as if to draw something from it, the officers physically restrained him and handcuffed him as well. Frederick Edney had no weapon or anything else in his pocket. Both of the Edneys were taken into custody. On July 31, 1970, Frederick Edney was convicted in Municipal Court on a charge of interfering with a police officer.

4. *Herbert Brown Incident.* On December 1, 1969, at about 12:30 a.m., Herbert Brown and Wesley Joiner, two black men, were walking along Atlantic Street near its intersection with Old York Road. There were automobiles parked along Atlantic Street near where they were walking, and they were carrying a flashlight.

Officers DeFazio and D'Amico, who were patrolling the area in an unmarked car, stopped the two men and pushed them up against a wall. Brown and Joiner were discovered to be carrying a pair of pliers and a screwdriver, as well as a flashlight. DeFazio stated to Brown, "Got you now, nigger," and accused him of attempting to steal a car battery. When Brown attempted to explain that his own disabled vehicle was parked about a block away, with two girlfriends in it; and that he was looking for a piece of wire with which to attempt to start his car, DeFazio struck him in the face with his hand.

The two men were handcuffed, placed in the police car, and taken to the police station. Their request for permission to inform their waiting female companions, and to give them carfare so that they could get home, was denied. When Brown complained that his handcuffs were too tight, DeFazio again used racially derogatory terms and did not loosen the handcuffs until they arrived at the police station. Charges of attempted larceny against Brown and Joiner were ultimately dismissed, for lack of a prosecuting witness.

Giving the police the benefit of the doubt, I shall assume for present purposes that the two men were, or reasonably appeared to be, attempting to steal a battery. But this would not, of course, justify the racial slurs, the rough treatment, or the disregard of the plight of their stranded female companions.

5. *Bernard Sisco Incident.* On October 31, 1969, at about 9:30 p.m., police patrolling in the 16th District were

notified by radio that a rape had occurred in the area of 37th and Wallace Streets. Shortly thereafter, approximately six officers arrived at the scene. The complaining witness stated that she had been raped by several males, and that she knew that one of them was blind and lived at 3620 Wallace Street, a short distance away.

Bernard Sisco, a blind 20-year old black male, resided at the address stated. Officers DeFazio, Carroll and Brown proceeded to that address, and, without standing on ceremony, opened the door and entered the house, announcing simultaneously that they were police officers. Bernard Sisco opened the vestibule door from the inside and stood there, with an open knife in his hand. The police officers heard the victim of the rape, who had accompanied them, say something to the effect that Sisco was one of the rapists.

The police ordered Sisco to drop his knife, and he did so, whereupon the police wrestled him to the floor. Lieutenant Taylor and Lieutenant McGaughrin came up on to the porch to help subdue Sisco. After a struggle, the officers succeeded in handcuffing Sisco, and pulled him out of his house and into the street. While they were awaiting the arrival of a patrol wagon, Sisco spit on Officer Carroll, whereupon Officer Carroll lost control of his temper, grabbed him by the collar, pushed him to the ground, and began beating him. A superior officer ordered Carroll to go back to his police car, and he did so.

When the officers were placing Sisco in the patrol wagon, he stumbled, whereupon Officer DeFazio pushed him violently into the wagon.

Sisco was taken to the West Detective Division Headquarters at 44th and Parkside, where he remained for approximately four hours. He had been at the Detective Division Headquarters for about two hours before his mother was permitted to see him for the first time. She

brought him a clean set of clothing, and observed that he was bleeding from his nose and mouth.

Thereafter, Sisco was taken to the Police Administration Building for processing. Photographs, taken some time between 2:25 a.m. and 4:45 a.m., on November 1, 1969, reveal no visible signs of physical injury to his head, nor do they conclusively rule out the presence of injury. The medical records of the Philadelphia Detention Center, where Sisco was held without bail pending preliminary hearing, do not reveal that he received any treatment. He was kept in the prison hospital solely because of his blindness, and not for any other reason.

At a preliminary hearing on November 7, 1969, the rape charges were dismissed when the victim was unable to identify Sisco positively as one of her assailants. He was, however, held for court on charges of resisting arrest, assault and battery on an officer, and carrying a concealed deadly weapon.

After the preliminary hearing, a physician to whom Sisco was referred by his rehabilitation counsellor, examined him on November 11, 1969. The doctor found swelling on the top of the head, and concluded that Sisco had suffered a cerebral concussion.

The evidence upon which the foregoing findings are based is sharply conflicting. According to Sisco, his sister, and his mother, Sisco never offered any resistance to the police, but was nevertheless severely and monstrously abused, both at the scene of the arrest, and while in police custody thereafter. If their testimony were accepted at face value, the police acted with utter barbarity. If the testimony of the police and the victim of the alleged rape were accepted as literally correct, Sisco was never struck at all by any of the police. Under this version, any physical mistreatment of Sisco was self-inflicted, by reason of his rolling around on the ground and otherwise struggling against the handcuffs.

Given the fact that the police believed they were in "hot pursuit," and the admitted circumstances of their entry into the Sisco house and their initial observation of Sisco; and given the admitted fact that at least one officer became so angry that he had to be restrained by his superior officer, I have no doubt that Sisco was struck, and that the officers did not limit their use of force to the precise amount required to "subdue" a prisoner who was, after all, both blind and handcuffed, and who had earlier relinquished his weapon when ordered to do so.

While I have concluded that the testimony of the complaining witnesses is undoubtedly exaggerated, I do not believe it is totally fictional. The exaggerations and embroidery sprang from a sincere and deeply held conviction that the conduct of the officers was totally unjustified.

The evidence was sharply in conflict as to whether the victim of the crime identified Sisco as one of her assailants, before his arrest. I have accepted the defense testimony that she did. It must be conceded, however, that the extent of her opportunity to make such an identification before the initial scuffle is not altogether clear; and 10 days later she was unable to identify him at the preliminary hearing.

6. *Joseph Reas Incident.* On the evening of May 2, 1969, Joseph Reas, a 16-year old white male, was attending a carnival at Father Judge High School. At approximately 10 p.m., he and three other boys entered the school playground near the carnival area, and saw a girl who was weeping and who had blood on her face. Police arrived at the scene and some of the boys started to run away. Reas did not run. However, he was struck twice on the head with a blackjack, fell to the ground, and was struck again on the back of the head. His head was cut open, and he lost consciousness as he was being placed in a police wagon.

Officer DeFazio was one of several officers who arrested Reas and other teenagers on that occasion.

Reas was taken to Nazareth Hospital, where he regained consciousness and received several stitches to close his head wound. He remained in the hospital for two days. He was initially charged with inciting to riot, but the charges were dropped while he was still in the hospital.

The boy's mother could obtain no information from the hospital as to what had occurred. The next day she went to the 7th Police District Headquarters but no one there could give her any information as to the identity of the police officers involved, except that they were members of the Highway Patrol.

In some undisclosed fashion, Mrs. Reas was caused to believe that Officer DeFazio was probably the one who had struck her son. She spoke to Captain Murphy, Commanding Officer of the Highway Patrol, several times by telephone. She was discouraged from attempting to speak directly to Officer DeFazio, but was advised that she had the right to press charges against him.

Mrs. Reas did not press charges against Officer DeFazio. Several months after the incident, DeFazio visited Mrs. Reas at her place of employment and, among other things, told her: "Highway patrolmen are known to be rough and tough, and I am a highway patrolman, and I am proud of it."

7. *Disciplinary Action.* In none of the foregoing incidents was any disciplinary action taken against Officer DeFazio, D'Amico, or, so far as the record discloses, any of the other police officers involved. In the following two instances, disciplinary action was taken against DeFazio:

(a) *Louise J. Reed.* On October 3, 1967, Louise J. Reed, a black woman and the wife of a Common Pleas judge, and Coleman Clark, a white man, were employed as teachers at the George Washington Carver Elementary School, which is located in a predominately black area.

Officer DeFazio was patrolling the area in a police car. At about 4 p.m., Mr. Clark, who had just left a faculty meeting at the school, was driving his car nearby. Officer DeFazio stopped him in front of the school; Mr. Clark did not know why he was being stopped, and DeFazio did not tell him. A heated discussion followed.

At about that time, other faculty members were emerging from the school. Among other things, DeFazio told Clark to shut up, and accused him of acting like "the black pigs that live around here." Mrs. Reed remonstrated with DeFazio because of this remark, but was told to shut up. Mr. Clark rejoined the argument, and others became involved. At one point, DeFazio placed Clark under arrest, but the school principal intervened and restored calm.

The next day, 57 members of the faculty of the school complained in writing to DeFazio's commanding officer, with copies to the Mayor and Police Commissioner. Ultimately, on November 8, 1967, DeFazio was tried by the Police Board of Inquiry on charges of using rude and insulting language, and conduct offensive to the public. Mr. Clark and DeFazio exchanged apologies. The Board found DeFazio guilty and recommended a two-day suspension, with which the Police Commissioner concurred. Mr. Clark was informed of the Board's decision.

(b) *Anti-Semitic Remarks.* On the same date as the hearing referred to in the preceding paragraph, DeFazio was also tried by the Police Board of In-

quiry on charges of insubordination, neglect of duty and disobedience of orders. He was found guilty of having referred to a member of the public as a "Jew bastard" in the presence of a Jewish police officer; appearing at a court hearing in improper uniform, and refusing to submit a memorandum to a superior officer. The Board of Inquiry recommended a 10-day suspension; Police Commissioner Rizzo reduced this to three days' suspension.

As a result of the two incidents discussed above, DeFazio received a total suspension of five days. However, this was "served" by deducting five days from his accrued vacation time, and thus did not result in any actual pecuniary loss.

8. *Miscellaneous.* There was a great deal of evidence concerning Officer DeFazio's off-duty conduct in his home neighborhood. This evidence, which is substantially uncontradicted, raises further serious questions about DeFazio's fitness for police work. However, since DeFazio is no longer on the force, no useful purpose would be served by detailing the circumstances here.

It is clear that numerous oral complaints were received by DeFazio's superiors, relating to his conduct both on and off duty, and that no written record of these complaints was made, and no action taken. These complaints had no appreciable effect upon DeFazio's official fitness ratings.

G. *COPPAR CASE*

The Coalition of Organizations on Philadelphia Police Accountability and Responsibility (COPPAR) is an organization of some 32 constituent organizations with a common concern about police conduct and police-citizen relations. The Co-Chairmen of the organization are Mrs. Mary

Rouse and Mr. Floyd Platton. The principal function of the organization is to receive citizen complaints of police misconduct through its constituent organizations, and, with the help of attorneys retained through the reorganizations, to bring the complaint to the attention of the Police Commissioner or other authorities in a position to remedy the conduct in question. Mrs. Rouse maintains an office at 124 W. Cumberland Street, Philadelphia, Pennsylvania.

COPPAR, and the individual plaintiffs (all of whom claim to have been the victims of unconstitutional police conduct), purport to bring this action on behalf of themselves and all others in Philadelphia who are, or are likely to be, similarly mistreated. Additional plaintiffs include the Black Panther Party, a militant black organization; and the Young Lords Party, a militant organization of persons with Latin American ancestry.

The specific instances of alleged police misconduct are set forth in chronological order, in the following findings:

1. *Charles Blackman.* This incident evolved from an altercation between Charles Blackman, a black male who resides at 1412 S. Fallon Street, and Officer Crawford McGerald, a black police officer who was off duty at the time.

Mr. Blackman's house is apparently quite close to the street. In parking his car in front of the Blackman residence, McGerald apparently permitted the vehicle to come in contact with the house; at least, Mr. Blackman was convinced that he had done so. Blackman called the police to report the incident, but the investigating officer, finding that Mr. Gerald's car was then parked legally, and observing no damage, left the area.

Shortly thereafter, Blackman encountered McGerald and cursed at him because of the incident. McGerald

pushed Blackman down in the street. Blackman struck McGerald a glancing blow on the side of his body with an ice pick which Blackman was carrying. Thereupon McGerald pursued Blackman onto the porch of his house, drew his revolver and struck Blackman on the side of the face with it.

A patrol wagon, and the investigating officer referred to above, arrived at the scene. They accepted McGerald's version of the incident, took Blackman to a hospital and, after he refused treatment, to the West Detective Division, where he was placed under arrest and charged with aggravated assault and battery on a police officer.

This incident is of no significance in the present case. At most, it arguably demonstrates that, in a case of a personal altercation between a civilian and an off-duty policeman, the police are likely to side with their colleague.

2. *Robert Nicholas.* Two Community Legal Services lawyers, engaged by a local community organization to represent two young men who had been arrested, were initially refused permission to see or talk to their clients. A high-ranking police officer, Inspector Shields, was called to the station. He reiterated the view that it was the policy of the Police Department not to permit attorneys to talk to defendants unless they knew the names of their clients and had been retained by the clients' families, as distinguished from community organizations. The police made no attempt to verify the parents' wishes in the matter, although one or more of them was present in the vicinity. The police appeared to be suspicious of the attorneys and antagonistic to the community organization which had engaged their services.

The defendants contend that the alleged police policy explained by Inspector Shields has since been discarded. I accept that representation.

3. *Raymond Ragland.* On May 18, 1970, at about 11 p.m., Raymond Ragland, a black male pharmacologist, was walking slowly on the sidewalk along Gowen Avenue near his home. This is a racially mixed area. Ragland was neatly dressed. An unmarked police car, which had been proceeding in the opposite direction, turned around a short distance up the street and came back towards Mr. Ragland. He looked at the car after it had completed this maneuver.

Officers Rowe and Taylor, who were in the police car, stopped and asked Ragland if he was all right. They received no audible response. They then got out of the police car and asked for identification. Ragland told them that he had none, although he did have a wallet on his person. Ragland complained to the police about being stopped and asked for identification.

Thereafter, over the space of about 10 minutes, a spirited discussion ensued, during which the officers continued to demand identification, and asked Ragland to take his right hand out of his pocket. Ragland continued to question their reason for stopping him, and told them that if he was wanted for anything they should take him to a police station, otherwise they should let him go.

Finally, Officer Taylor reached for Ragland's right hand, and Ragland quickly pulled his hand out of his pocket. The officers then told Ragland he was under arrest, but did not say what for.

Ragland was then frisked. The officers pulled his arms behind his back for the purpose of handcuffing him. Ragland pulled his left arm away. One officer thereupon told him that he would "twist your black arm off." Officer Taylor struck Ragland on the arms, spine and knuckles with his nightstick, and also jabbed him in the stomach with the stick. Ragland was handcuffed, and taken in a patrol wagon to the 14th District Station, where he pro-

duced his identification. He was told that he was being held "for investigation."

Thereafter, Ragland was taken to Northwest Detective Headquarters, about three miles away. He was asked his name, address and occupation, and asked what organizations he belonged to. He was also requested to make a statement. Ragland identified himself, but refused to make any further statement. He was then told by a detective that he was being charged with assualt and battery on an officer, resisting arrest, and for disturbing the peace. About an hour later, Ragland was transported to the Police Administration Building. He was given a preliminary hearing, and was released on his own recognizance at about 5 a.m. Several weeks later the charges were dismissed at a further hearing.

Ragland wrote a letter of complaint to the Police Commissioner. The latter responded, advising that the complaint was being referred to the Highway Patrol. Several weeks later, a representative of the Highway Patrol informed some of Ragland's fellow employees that nothing would be done with respect to the complaint. Ragland also gave a statement to the FBI concerning the incident, but never heard further from that agency.

Several months later, a staff inspector of the Police Department requested Ragland to provide a written statement of the incident, and Ragland complied. Three months later having heard nothing further about the matter, Ragland's attorney telephoned Inspector Kopsitz, and was then advised that no action would be taken. Except for this conversation, Ragland has never received any information from the Police Department concerning the disposition of his complaint.

4. *Howard Schwartz.* On May 23, 1970, shortly after midnight, a black male teenager snatched a set of car keys from a woman who had just parked her car near Rodney

Street and Mt. Airy Avenue. The boy and three companions then fled the scene. Two police officers observed this incident and gave chase, but the boys escaped. Thereupon, the two officers, together with other officers who had been called to the scene, proceeded through the area and picked up approximately eight teenage boys and brought them back to the scene for possible identification by the victim. She did not identify any of the boys, and only one of the boys was believed by the police to resemble the youth they had earlier seen fleeing.

When one of the boys resisted the officers' efforts to have him confront the victim, Officer Duross pulled him from the police car and struck him in the face with his fist. All of the eight boys were taken away from the scene in police cars. Notwithstanding the victim's inability to identify her assailants, the two boys who had been apprehended by Officer Duross were taken to 14th District Headquarters. They were held until 8:30 a.m., when they were interviewed by a juvenile aid officer. They were charged with robbery, and subsequently released in the custody of their parents.

One Howard Schwartz, a disinterested witness who resided nearby, observed the police conducting the on-the-spot confrontations. He was disturbed by what he regarded as improper police conduct, and reported the incident to Mrs. Rouse of COPPAR. However, he made no complaint to police officials, because he felt it would be pointless.

5. *Kenneth Lassiter.* On June 6, 1970, at about 7 a.m., Kenneth Lassiter, a 16-year old black male, at the request of his mother, was loading some packages into a car in front of his home at 6th and Green Streets. He was dressed in a T-shirt, dungarees, and sneakers with no socks.

Detective McCaron was patrolling the area in an unmarked police car. Among other things, he was investigating a rape which had taken place at a nearby school the previous week. He had been furnished a description and a composite sketch of the alleged rapist. He concluded that Kenneth Lassiter resembled the suspect.

The officer approached Lassiter and ascertained his name, age and address, and told Lassiter that he was being taken into police custody for investigation in connection with some streetcar robberies.

Lassiter did not object to accompanying the officer. The officer made no attempt to inform the boy's family of the situation, until Lassiter's mother, who had observed the incident from inside the house, came out to protest.

The officer told her that Kenneth was being taken to the Central Detective Division, and he was in fact transported there in a patrol wagon.

Although the police apparently did not consider that Kenneth was under arrest, the fact is that he was photographed, shown the composite sketch of the rapist and told the reason for the investigation, warned of his right to remain silent and to have a lawyer, and questioned about his school and social activities. At some point, he was requested to take a lie detector test, and agreed to submit to this examination.

It is the policy of the Police Department, concurred in by the District Attorney's office, that any person 16 years of age or older may be submitted to a lie detector test, without notification to or consent of his parents, if he consents.

Kenneth was taken to the Police Administration Building, and a polygraph test was administered. As a result, the police concluded that Kenneth was innocent. One of the initial questions asked of Kenneth during the test was, "During the first 13 years of your life, do you remember jerking off?"

Kenneth was released at about noon on the day of his arrest. He had not been provided with any food during his time in custody, and he was not provided with transportation home.

Immediately after Kenneth was taken from his home by the police, his mother telephoned a relative who worked for the Human Relations Commission. The latter arrived at Central Detective Division while Kenneth was still there, but was not permitted to see him. She asked why he was being held, and was told that he was not under arrest, but was just "under investigation." She asked that, in that case, he be released immediately; and she was assured that Kenneth would be released in a few minutes. Instead, Kenneth was removed to the Police Administration Building for the polygraph test, but the relative was not informed of this until about 15 minutes later. She protested that he was too young for such a test, but her protests were ignored.

A written complaint in connection with the incident was made to the Police Commissioner. Staff inspectors interviewed Lieutenant McCaron, but no action was taken.

5. *Helen Peurifoy.* On June 10, 1970, the police were required to deal with what was apparently a potentially tense racial situation in Southwest Philadelphia (whether the tension was racial in origin, or stemmed from teenage gang disputes, is not altogether clear). Officers patrolling the area encountered a large group of persons, mostly blacks, in the vicinity of 57th Street and Chester Avenue. Some children in the group were holding bottles. The officers proceeded to arrest some of these persons.

Mrs. Helen Peurifoy, a black woman, had been visiting friends nearby and came out to see what was happening. She questioned the police as to why the particular people were being arrested, and urged the police to arrest

some other persons who had escaped. She was immediately placed under arrest for "inciting to riot." She protested her arrest, and attempted to resist police efforts to handcuff her, by swinging her arms.

One Sergeant Simmons, Patrolman DiSalvatore, and two other police officers, subdued Mrs. Peurifoy and succeeded in placing handcuffs upon her. She was pulled across the street and pushed into a patrol wagon, and transported to the district police station.

Upon arrival at the police station, Mrs. Peurifoy did not willingly leave the patrol wagon, so she was yanked out of the vehicle by Officer DiSalvatore, who also threatened her with his nightstick and called her a "black bitch."

Inside the station, Mrs. Peurifoy requested a glass of water and some medication which she needed, but this request was ignored. She was not permitted to make a telephone call. After approximately 45 minutes, she was again handcuffed and taken in a patrol wagon to West Detective Division Headquarters.

During both of her trips in the patrol wagon, Mrs. Peurifoy was jostled extensively by the motion of the vehicle; she is convinced to this day that the vehicles were intentionally operated in an erratic manner, swerving from side to side, stopping and starting suddenly, in order to increase her discomfort.

At West Detective Division Headquarters, Mrs. Peurifoy was kept in a cell for about an hour, and again was denied water and medication. She was questioned by a detective as to what had happened, and was not warned of her rights until after she has responded to his questions. She complained to him of her illness and need for medication, and also about the treatment which had been accorded her by the police. The detective then left the interview room, and returned in about 15 minutes, informed Mrs. Peurifoy that she was being discharged,

and offered her a glass of water and the requested medication. She was then visited by a staff inspector who offered to drop all charges against her if she would promise not to file a complaint against the police officers. She was returned to the district police station, where the officer in charge told her that he would write a note to the officer who had mistreated her. About three hours after her original arrest, Mrs. Peurifoy was released, and no charges were ever filed against her.

6. *Mary Blackwell.* On July 23, 1970, at about 10 p.m., police were summoned to the scene of a disturbance in the area of 24th and Moore Streets, where bottles and stones were being thrown. There had been large-scale racial disturbances in that area in the past.

Among the other events of that evening, two police officers arriving at the 1700 block of 24th Street observed two teenage boys, one white and one black, confronting each other in the street, each with a belt wrapped around his hand. A crowd had gathered, and the officers had difficulty reaching the boys. One of the officers, Sergeant Mangini, took the belt away from the white boy, and approached the black youth, one Vincent Blackwell, 17 years of age. As Blackwell backed away from the officer, Sergeant Mangini struck him on the arm with his nightstick. Blackwell's 20-year old sister attempted to intervene, and was jabbed in the abdomen with the nightstick.

Blackwell's mother, who had come down from her porch to try to get her boy back into the house, was nearby when this occurred. When the sergeant swung at her son, she grasped the officer's shirt and tried to push him away. The officer struck her in the abdomen and pushed her away from him.

Other people gathered around, and the sergeant cleared the area by swinging his nightstick. All three Blackwells were placed under arrest and taken to a patrol wagon. No one else was arrested on that occasion.

Mrs. Blackwell was dressed in a slip and blouse, and her daughter, who had been preparing for bed, was wearing blue jeans and a pajama top. All three Blackwells were taken to South Detective Division Headquarters. The police did not inform Mrs. Blackwell of the nature of the charges against her or her children. She was told that she did not have to make any statement, however she did make a voluntary statement, and so did the children.

While the Blackwells were being held in custody, the police were proceeding to investigate the incident, by taking statements from residents in the area. All of the witnesses agreed that Sergeant Mangini had not been attacked, and Sergeant Mangini had advised the detectives that he had struck the Blackwells. All of these interviews were completed by 1:30 a.m.

After 1:30 a.m., the Blackwells were given food for the first time, and Mr. Blackwell, the husband and father, was permitted to visit them and give them clothing.

At about 3 o'clock a.m., the three Blackwells were transported to the Police Administration Building, where they were fingerprinted and photographed. At about 4:30 p.m. on July 24, they were arraigned, and were told for the first time that they were charged with assault and battery on a police officer, disorderly conduct, resisting arrest, and inciting to riot.

On July 31, 1970, the Blackwells appeared at a preliminary hearing. The presiding magistrate dismissed all charges, but emphatically told Mrs. Blackwell that if any charges arising out of the arrests were brought against police officers, she would be rearrested and prosecuted.

7. *Jean Thomas.* On August 11, 1970, at about 6:45 p.m., Officer Tullio Ioannucci was shutting off an open fire hydrant at 39th and Mt. Vernon Streets. Mrs.

Jean Thomas, a black woman, suggested to him that it would do no good to close the hydrant, because people would simply open it again. The officer told her, in effect, not to bother him. The conversation became heated. The officer called Mrs. Thomas a nigger bitch, and she called him a pig. Residents in the area began to gather about.

The officer advised Mrs. Thomas that he was going to arrest her for disorderly conduct, and proceeded to his nearby police car to call for a patrol wagon. Mrs. Thomas went into her house.

Additional police officers and park guards arrived, in response to Officer Ioannucci's call. He then attempted to enter Mrs. Thomas' house, but the doorway was blocked by her 17-year old daughter Cheryl. Two other children, James Thomas, 14, and Brenda Thomas, 18, also were at the door and told the police to stay away. Cheryl Thomas refused to move out of the officer's way, and was arrested and placed in the patrol wagon. The other two children tried to prevent this, and were also arrested and placed in the patrol wagon. Two officers then entered the house and conducted a thorough search, from basement to attic, but did not find Mrs. Thomas. They then left and took the three children to 16th District Headquarters. They were interviewed by a juvenile aid officer, but refused to give information. Brenda was sent to West Detective Division headquarters to be treated as an adult offender; James and Cheryl were charged with disorderly conduct, resisting arrest, and assault and battery, and taken to the Youth Study center and held overnight. The next morning they were released, and all charges were dropped.

A few days later, Brenda Thomas was released, having been found guilty of one of the offenses charged against her. Mrs. Thomas was never arrested or charged with any offense arising out of this incident.

8. *Dennis Holland.* On August 14, 1970, at about 2 p.m., a police officer observed Dennis Holland, a 25-year old black male, lying unconscious in a parking lot at 13th and Commerce Streets. He called for an emergency wagon, which transported Holland to Jefferson Hospital.

In the emergency room, Holland regained consciousness, but did not respond sensibly to questions asked of him, and proceeded to behave in a very erratic manner. He was thereupon placed under arrest and charged with disorderly conduct. Although police obtained his identification from his wallet, no member of his family was notified. He was promptly sentenced to 30 days in jail, in default of a $30 fine, and was taken to the House of Corrections. He continued to behave erratically, and was taken to the prison hospital.

Throughout this entire series of events, Holland, who was a diabetic, had been suffering from a diabetic reaction, and was clearly not responsible for his actions. It was not until the following day that his true condition became known, after which his relatives were contacted, and he was released from prison that night.

No charge of actual police misconduct could properly be based upon this incident. The police, the hospital staff, and the committing magistrate exhibited merely a regretable lack of concern, and a willingness to jump to conclusions.

9. *Fernando White.* On August 15, 1970, at about 11:30 p.m., two highway patrolmen got out of their police car in Germantown in order to investigate a person they believed to resemble a rape suspect. A group of persons were standing nearby. Upon completion of their investigation, the officers got back into their vehicle. A black youth, Fernando White, age 16 or 17, approached the vehicle on the passenger side, asked the officer for his

name and badge number, and then spit upon him. The officers then emerged from the police car, subdued and handcuffed White, after a brief struggle.

White was taken to 14th District Headquarters, and a group of citizens followed him to that office in order to protest his arrest. A police lieutenant spoke to this group, interviewed White, and decided to release him because he had no prior record, the incident was not serious, and White apologized to the officer. No charges were filed, and White was released at about 12:30 a.m.

10. *Adalberto Molinas* (This incident did not involve anything approaching misconduct by the police, nor does it shed any light upon the issues in this litigation.)

11. *Raid on Black Panther Headquarters.* On Saturday, August 29, 1970, two police officers were shot, one of them fatally, while on duty at a police station. On August 30, 1970, two more policemen were shot and wounded when they stopped a stolen car.

The Police Department apparently suspected that members of the Black Panther Party may have been involved in these shootings. A convention, the Citizens Constitutional Convention, was scheduled to be held in Philadelphia on September 4, 1970; members of the Black Panther Party were expected to attend that meeting.

The police planned massive raids on premises believed to be occupied by the Black Panther organization; the raids were carried out at about 6 a.m. on August 31, 1970. Raids on premises at 3625 Wallace Street, 2935 Columbia Avenue, and 428 Queen Lane, were conducted simultaneously.

The raid on 3625 Wallace Street was conducted pursuant to a search warrant. Members of the press were alerted in advance, and press photographers were present at the scene.

Interpreting the evidence in the light most favorable to the police, it appears that approximately 20 police officers arrived at 3625 Wallace Street; that an inspector knocked on the door and announced that he had a warrant to serve; and that thereafter some gun shots were fired from inside the building. The police fired about five rounds into the building, then fired tear gas projectiles into the building. The occupants emerged, with their hands on their heads. Police spotlights illuminated the area. All of the occupants were lined up at gunpoint against a wall, and all except the one female present were required to disrobe completely. They were photographed in that condition, and the photographs received widespread newspaper publicity.

The searches of the other premises were very vigorous and thorough. It does not appear whether there were search warrants for the other properties (apparently, there was no search warrant for the Queen Lane property). The three buildings were totally ransacked by the police.

As a result of three raids, approximately 16 persons were arrested and charged with assault with intent to kill, violations of the Uniform Firearms Act, and conspiracy. All were held without bail until 8 p.m., at which time bail was set in the amount of $100,000 each, by a Common Pleas judge who, at the intervention of Police Commissioner Rizzo (now Mayor Rizzo) went to the Police Administration Building for that purpose, superseding the regularly assigned magistrate. At the bail hearing, the judge refused to consider or apply the prescribed standards for fixing bail. On September 3, 1970, in the course of a hearing in this Court on plaintiffs' request for a preliminary injunction directed, *inter alia,* to the bail issue, the bail in each case was, with the consent of the District Attorney's office, reduced to $2,500.

In conjunction with these raids, Mr. Rizzo made various inflammatory outbursts, arguably racial in overtone, in the presence of newspaper reporters; these remarks were widely published in the local press.

12. *23rd and South Streets Incident.* On August 30, 1970, at 5:45 p.m., a bus containing approximately 45 teenage males and 12 adults, all of whom were black, stopped near 27th and South Streets to pick up several black youths who were being pursued by a large group of white youths. Several passengers got off the bus, and fights erupted between whites and blacks; some of the participants were armed with sticks and bottles. A crowd, about evenly divided between whites and blacks, congregated in the area.

There had been several racial confrontations in that area over a period of several weeks. Three police officers appeared on the scene and immediately attempted to disperse the crowd and to separate the blacks from the whites. The bus departed, with some of its occupants still on board; the remaining youths ran in all directions.

A large group, containing approximately 50 persons, most of whom were black, proceeded east on South Street. One of the police officers was injured when he tripped over an exposed water pipe. Other police learned of this injury, and apparently were under the impression that the police officer had been assaulted (it is agreed that he was not).

At 23rd and South Streets, two police officers halted the group mentioned above, and stood them against a wall. Several patrol wagons and a bus load of policemen arrived at the scene, and some of the officers drew their guns. The persons halted were frisked, handcuffed and placed in patrol wagons. A few youths who failed to halt were apprehended and brought back to the scene.

Altogether, 29 persons were taken into custody. Two who had suffered injuries were taken to a hospital; the remaining 27 (10 junveniles and 17 adults) were taken to the 17th District Headquarters. One youth was returned to the scene in an attempt to identify white persons involved in the incident, but no such identification occurred.

After about an hour at the 17th District Headquarters, the arrestees were taken to the Police Administration Building, where all were photographed and fingerprinted, and held in a cell room.

Detectives proceeded to interview the arrestees, in groups of five. The first five interviews were completed at about 8 p.m., by which time the police had learned from other sources that the injured officer had not been assaulted, but had sustained his injury by tripping and falling. At about 8 p.m., a representative of the Human Relations Commission telephoned the Police Administration Building to inquire about the situation.

Nevertheless, the interviews continued. A record check was run on each of the arrestees, and statements were taken from each.

By 9 p.m., the police had determined that no charges would be brought against any of the persons arrested. But the interviews continued. Ultimately, at about 11:30 p.m., the arrestees were taken back to the 17th District, where a representative of the Human Relations Commission had arranged to have them picked up by relatives.

The police did not consider that any of these individuals was arrested on this occasion. The only information given to the arrestees was that they were being held in custody to get them off the street.

No whites were arrested or detained in connection with this incident. The procedures actually followed by the police were totally inconsistent with the explanation

ultimately offered, namely, that the police were attempting to protect the blacks arrested.

While the evidence does not justify the conclusion that the police were unwilling to prosecute the whites involved in these skirmishes, (some attempt was made to identify possible white culprits), the fact remains that blacks were taken into custody "for investigation", whereas the whites were not.

13. *Wilfredo Rojas.* On August 31, 1970, at about 11:30 a.m., police Officers Oliver and Brooks received word that two men had been stripping automobiles, and had been seen running west on American Street; and that one of the men was wearing a blue shirt. The officers observed Wilfredo Rojas, an 18-year old Puerto Rican male, and a companion, walking along Dauphin Street near American. The two youths stopped to converse with two individuals seated in a parked Volkswagen automobile.

Because Rojas and his friend had blue shirts on, the officers stopped to question them. Thereafter, one of the officers concluded that a female seated in the Volkswagen bore some physical resemblance to a person whose photograph he had seen on an FBI wanted poster.

The officers radioed for instructions, and a supervisor appeared on the scene. He told them that the alleged car strippers had already been arrested, and that Rojas and his friend were not involved in that offense. Nevertheless, all four persons were taken into custody and transported to East Detective Headquarters. Police records were checked, and the police satisfied themselves that the girl was not the person wanted by the FBI.

One of the males was wearing the insignia of the Young Lords Party. The police questioned all of the males about their involvement with that organization, and about a homicide with which the police suspected that the

Young Lords Party had some connection. No charges were filed against any of these persons; all were released that day.

14. *Stop and Frisk Incidents of September 1, 1970.* On September 1, 1970, at about 9:30 p.m., a group of 16 police officers stopped a group of approximately 30 black teenage boys in the area of 48th Street and Fairmount Avenue. Some of the officers drew their guns, and the boys were ordered to line up against a wall, where they were searched. Finding no weapons, the police released the boys. At no time did the police give any indication as to the reason for their actions.

After proceeding approximately one-half block farther along the street, the same boys were stopped again by a different group of policemen, and the same search procedure was repeated. This time, the boys were ordered to leave the scene in different directions.

On the same evening, two police officers stopped another group of 10 or 15 black boys walking along Wyalusing Avenue near Lancaster Avenue. The boys were searched, and were allowed to leave the area in groups of four or five.

The area in which these incidents occurred is known to the police as one in which juvenile gang activity flourishes. However, the boys who were stopped were not in fact involved in gang activities at the time.

15. *Ronald Crampton.* On September 3, 1970, two police officers at the scene of a fire saw a car go through a red light, at what they considered to be a high speed. They gave chase in their police car. The operator of the pursued vehicle, Ronald Crampton, was not aware of the police presence, and did not immediately respond. Ultimately, he became aware of the police officers and stopped

his car. The police shined a spotlight on him, drew their weapons and ordered him out of the car. After frisking him, and being satisfied that he was unarmed, they gave him a ticket for going through the traffic light and for a defective muffler.

Mr. Crampton is convinced that he was not guilty of any infraction. He demanded a hearing in Traffic Court, but was fined even though neither officer appeared at the hearing.

16. *Johnson and Simon.* On September 8, 1970, at about 10 p.m., two black high school students, John Stanley Johnson and Herbert Simon, were walking along Chew Avenue in Germantown, immediately in front of Johnson's residence. Johnson was swinging a closed umbrella.

Officers Winchester and Kochik drove past the boys in an unmarked police car, and heard Johnson make some comment which they could not decipher. The police turned around and returned to the scene. They demanded to know what Johnson had said, frisked both boys and asked for identification. The boys denied making any comment, and told the police that Johnson lived at the house in front of which they were standing. The boys did not give the police their names, but Johnson handed the police his wallet, which contained his identification.

The boys were placed in the police car and transported to 14th District Headquarters. However, before they left the scene, Johnson's grandmother came out of the house and inquired as to where they were being taken. The police gave her no reply.

While the boys were at the district headquarters, Simon complained that the police were being too rough with another individual whom they had apprehended. A black police officer pushed Simon away, and, when Johnson attempted to see what was happening, he pushed Johnson

away and struck him on the chin with his fist, stating that he did not like the boys' attitudes.

The boys were then locked in a cell. Johnson's mother arrived at the station, but was not permitted to talk to him. After about an hour, the boys, handcuffed together, were taken in a patrol wagon to another police station at 22nd Street and Hunting Park Avenue. The police did not inform Johnson's mother of his whereabouts until about an hour after the boys had left.

At the 22nd Street and Hunting Park Station, the boys were interrogated as to their previous police contacts, and their organizational affiliation. At about 1:30 a.m., Johnson's mother was permitted to see them for the first time. After warning the boys of their constitutional rights, the police formally charged Johnson with disorderly conduct and interfering with a police officer. No charges were lodged against Simon.

Mrs. Johson was permitted to talk to the officer who had struck her son; the officer maintained that he had acted properly.

Both boys were released in the custody of Mrs. Johnson at about 4 a.m. on September 9, 1970. Later in the day, Johnson and his mother were interviewed by a juvenile court officer. Because they disputed the charge that Johnson had struck the policeman, the case was referred to juvenile court.

17. *Alaberti and Whelan Incident.* On the evening of September 17, 1970, a white male was severely beaten by several black males, in the vicinity of 22nd and Pierce Streets, a racially tense area. Several police cars arrived at the scene, and the victim was taken to a hospital.

Many residents of the area, all of whom were white, were congregating in the street, aroused by the incident. The police told them to disperse, but some of the residents

refused to leave the scene and were vocal in their criticisms of the police handling the matter.

One of the residents, Mrs. Alaberti, was pushed against a police car and struck with a nightstick. A 17-year old white youth, James Whelan, protested the treatment she was receiving. Several other persons loudly criticized the police. All were arrested, and held in custody at the 17th District Station for about an hour and a half. All were then released without charges.

None of the persons arrested made any complaints about the conduct of the police, because they were told by a ward committeeman who was present that any such complaints might result in criminal charges being placed against them.

18. *Fred Brooks Incident.* Two police officers stopped a 22-year old black male who was walking near his home at about 2 o'clock a.m. He could not produce any verification of his identity, but one of the officers recognized him as a resident of the neighborhood. They made a note of his name and age, and, apparently, detained him briefly while they checked some nearby parked cars for possible signs of criminal activity.

Under the circumstances, I am satisfied that the police acted reasonably in all respects on this occasion.

19. *Locke and Perry.* On September 20, 1970, at about 8:30 a.m., Officer Dennis Kirby was visually inspecting the interior of an automobile parked in the 2500 block of Mascher Street (his explanation is that he believed the car might be stolen). However, (a) he had no information to that effect and made no attempt to learn whether it had been reported stolen; and (b) the age and physical condition of the vehicle would seem to have made it an unlikely candidate for theft.

As the officer was withdrawing from the automobile, he was struck by some water thrown from a third floor window of the adjacent house. The officer testified that he saw Oliver Locke throw the water. Oliver Locke, who resided at the house, denies having thrown the water. For present purposes, I shall assume that Locke did in fact throw water on the police officer.

A heated verbal exchange followed, in the course of which Locke told the officer to stay away from the car (which was Locke's car) unless he had a warrant.

Officer Kirby radioed for assistance, and Lieutenant Smith and several other patrolmen and a patrol wagon arrived a few minutes later. Locke remained at the open third-floor window of his house, and made several derogatory remarks to the police, including calling them "pigs." The police told him to come down to the door, that he was under arrest, and that if he did not come to the door they would come in and get him. Locke again stated "fuck you, pigs." What followed can only be described as a rather complete loss of control on the part of the police.

The police broke open the door to the house, and three of them ran up the stairs. Locke's wife; five months pregnant and dressed only in a nightgown, was standing on the second-floor landing. Lieutenant Smith pushed her out of the way and ran up to the third floor, where he seized Oliver Locke and pulled him down the stairs. Officer Kirby struck Locke on the head with a blackjack, causing an open wound.

As Locke was being dragged down the stairs, Lieutenant Smith again pushed Mrs. Locke aside. She followed them down the stairs, screaming, and the officers pushed her away and struck her body with their nightsticks. She was dragged by the hair, and fell down several steps.

Mr. Locke, still struggling, was pushed into a patrol wagon. His wife followed, protesting; she called the

officers "pigs" and attempted to strike one of them on the back with her fists. The officers called her a pig as well, and pushed her into a patrol wagon.

Mr. and Mrs. Locke were taken to East Detective Division Headquarters, and locked in cells. In the course of this proceeding, Mrs. Locke, by reason of her condition and scanty attire, was the target of rude and offensive remarks from some of the policemen present. Mr. and Mrs. Locke remained at East Detective Division Headquarters until that evening, when additional clothing was obtained for Mrs. Locke, and both were taken to a hospital. Mr. Locke received five stitches for his head wound, Mrs. Locke was found to have a bruised foot, but no other medical problems developed.

After receiving hospital treatment, Mr. and Mrs. Locke were taken to the Police Administration Building and charged with assault and battery on a police officer, disorderly conduct, resisting arrest, threats to do bodily harm and breach of the peace. They were released on bail.

The house in which the Lockes resided was shared with another couple, Mr. and Mrs. William Perry. On September 23 and 24, police, armed with a search warrant, appeared at the house to search for drugs. The search was very thorough. The officers removed clothing from bureau drawers, and emptied sugar bowls and soap cartons in the course of the search. No drugs were found. The officers made no attempt to straighten up the disorder their search had caused.

On November 24, 1970, at 2 a.m., Mr. Perry was arrested in South Philadelphia and held in police custody until 11 p.m. The police informed him that he was being arrested for "conspiracy to commit terroristic vandalism," but no formal charges were ever filed against him.

20. *Thomas Lodico.* On September 24, 1970, shortly before 9 a.m., Thomas Lodico parked his car near Bartlett

Junior High School at 11th and Christian Streets, and proceeded to distribute to students several copies of the "Plain Dealer," an underground newspaper. Mr. Lodico was 23 years of age, white, and had long hair, a mustache and beard. Bartlett Junior High School is located in a predominately black neighborhood.

The newspaper which Lodico was distributing contained an article entitled "Fuck the Schools," and included a rather illegible cartoon which, arguably, depicts someone stabbing or otherwise assaulting a police officer. The text of the newspaper article included many words generally regarded as obscene.

Two police officers stopped Lodico and asked for a copy of the paper. Lodico gave them one. The officers expressed the view that the newspaper was "trash." The officers then summoned their supervisor, a sergeant, to the scene. The officers searched the back part of Lodico's car, where there was a pile of these newspapers.

A group of about 20 adults and children gathered at the scene. The adults complained about the paper which Lodico was distributing.

The officers thereupon handcuffed Lodico, placed him in the patrol wagon, and transported him to a district station. About 15 minutes later, he was taken to South Detective Division Headquarters, where he was photographed. Lodico requested a lawyer and stated that he did not wish to make any statement; nevertheless, he was questioned by various detectives about his associations with another underground newspaper. He was held in custody until about 12:30 p.m., when he was released. No charges were filed. He was not fed during his time in custody. During this same period, Lodico's automobile was taken by the police to the South Detective Division Headquarters, and was searched further.

21. *Joseph Sterling.* On September 24, 1970, at about 9:15 a.m., Joseph Sterling, who also worked for the Plain Dealer newspaper, drove his automobile slowly through the intersection of 11th and Christian Streets, and parked at an angle, whereupon he got out of his car and looked about in a confused manner. Mr. Sterling was white, 20 years old, and had long hair, a mustache and a beard.

A police officer (Rouse), who had observed Sterling's activities, stopped him and asked if anything was wrong. He noticed that Sterling's eyes seemed blood-shot, and that copies of the Plain Dealer were in Sterling's automobile. Officer Rouse then took Sterling into custody, and transported him to the district station, where Sterling was told that he was under arrest for driving while under the influence of narcotics. He was taken to the Police Administration Building in a patrol wagon, was fingerprinted and photographed, and voluntarily took a ballon test.

Sterling was permitted to make a phone call. He told the officers that he did not wish to make any statement until he had consulted a lawyer. Nevertheless, several detectives engaged him in a discussion involving his views on police activities and on the Vietnam war. He was interrogated about his use of drugs. He was not fed during his time in custody. At about 1 p.m., he was brought before a magistrate and was discharged.

22. *Mark Soto and Jerry Seriano.* On September 25, 1970, at approximately 10 p.m., police officer Charles Smith was called to the scene of a fist fight at Howard and York Streets. Approaching the area, he radioed for assistance. As the officer approached the scene, two males who appeared to have been engaged in a fight with each other stopped fighting, walked down York Street toward Hope Street, and again confronted each other as if to renew the fight. Officer Smith followed, and restrained one of the men against a parked car.

At this point, two other males grabbed Smith's arm and struck him with their fists, and one attempted to grab his gun. All three civilians then ran away.

A 15-year old black male, Mark Soto, was standing behind the officer; Smith apparently believed that he had been involved in the assault. Using the butt of his gun, Officer Smith struck Soto. Soto tried to run away, but Smith caught him and wrestled with him, striking Soto again with his weapon.

At this point, two other police officers arrived on the scene. One of them struck Soto on the head with his night stick, and Soto fell to the ground. Two officers then held Soto down. Soto continued to struggle and was kicked in the head by a police officer.

A crowd gathered. Some were shouting derogatory remarks, others merely pleaded with the officers to stop treating Soto so roughly. Bottles and bricks were thrown in the general vicinity.

Soto was taken in a patrol wagon to 26th District Headquarters, and was then taken to Episcopal Hospital where he received stitches for a head wound. He was then taken to 25th District Headquarters and held over night. During this period, various police called him a Panther and a "black nigger."

In the course of the foregoing incident, two other officers saw a Puerto Rican male throw a bottle in the direction of their police vehicle. The culprit disappeared down Waterloo Street. Shortly thereafter, the officers apprehended Jerry Serrano, a Puerto Rican male age 16, believing him to be the person who threw the bottle at them. Two other officers appeared to assist in the arrest. Serrano struggled to escape. The officers struck him approximately six times on his back and arms with nightsticks, and called him a "Spic."

Serrano was taken first to one police station then to another. Ultimately, he was charged with assault and battery and disorderly conduct. He was released to his father at 5 a.m. the following day. Serrano has consistently denied that he was guilty of any offense on the occasion in question.

A delegation headed by Mrs. Mary Rouse, of the COPPAR organization, went to the 26th District Headquarters to protest the treatment of Mark Soto. She asked to speak to the captain, but he was not present and the officer in charge refused to communicate with him. Mrs. Rouse then telephoned Lieutenant George Fencl, head of the Civil Disobedience Squad, and he and the district captain soon arrived. After speaking briefly with the protesting group, these officers then sent for a staff inspector. Arriving a short time later, the staff inspector met with representatives of the protesting group and recorded their complaints and promised a thorough investigation. However, neither the complainants nor the district captain ever heard anything further about the investigation.

23. *Ellis Steward.* On October 1, 1970, at about 3:30 p.m., Ellis Steward, a 52-year old black man, was driving in his car and picked up three young individuals. Sergeant Komada, patrolling in a police car, saw these persons get into Steward's car. One of them resembled a person known to Sergeant Komada as a narcotics user, and Sergeant Komada had been informed that a Negro male was selling narcotics in the area. Accordingly, Komada followed the Steward vehicle.

At Germantown Avenue, the three passengers got out of the car. Shortly thereafter, Mr. Steward stopped his car in response to Sergeant Komada's signals. Komada asked Mr. Steward for his vehicle registration, and ad-

vised him that the persons who had just been in his car were narcotics users. The first card Steward showed to Sergeant Komada was not his vehicle registration. Steward was ordered out of his car, and complied, and was frisked. This occurred in front of a factory from which workers were emerging at the change of shifts. Steward loudly objected to the police procedure, especially in front of a large number of people in an area where he was known. He informed the officer that he was physically disabled. Sergeant Komada then arrested Steward for disorderly conduct.

At that point a second officer (Flint) arrived on the scene, and the two policemen proceeded to handcuff Mr. Steward. Steward objected to being handcuffed and swung his arms about to evade the handcuffs, whereupon Officer Flint struck Steward on the shoulder and head with his blackjack. Steward and both officers fell to the ground in the scuffle. Steward was handcuffed and placed in a patrol wagon. Upon arrival at the 35th District Headquarters, Steward seemed to be unable to walk. He lay on the floor for about a half hour, and then was taken to a hospital, where a physician examined him and concluded that he was allright. He was then returned to the police station and formerly charged with disorderly conduct and resisting arrest. He was eventually released from custody at 3:30 a.m. the following morning. During his 12 hours in police custody, he was not fed. On October 21, 1970, he was convicted of the above charges in Philadelphia Municipal Court.

24. *Albert Boccuto and Anthony Dignetti.* On October 6, 1970, at about 6 p.m., a group of about 20 boys, ranging in age from 15 to 21, were playing football in a school yard at 3600 North Randolph Street. During the preceding two-year period, the police had received many com-

plaints from residents of the area and from the Board of Education to the effect that the school building was being vandalized and that young persons were drinking and breaking bottles in the school yard at night.

Officer Wells, patrolling nearby, new of these earlier complaints. He went to the school yard and told the boys to leave.

One of the youths, Albert Boccuto, age 17, Caucasian, did not immediately leave, and protested the validity of the officer's order. The officer radioed for assistance. Boccuto used obscene language to the officer, and the officer then told him that he was under arrest. The officer pushed Boccuto against a chain fence and held him by the hair to prevent his escape. Nearby residents gathered to witness the encounter.

Another white male, Anthony Dignetti, age 22, protested the officer's treatment of Boccuto. The officer told him that he also was under arrest. Both youths were then handcuffed and taken in a patrol wagon to the 35th District Headquarters. Other officers arriving on the scene dispersed the remaining crowd by waving their nightsticks.

Neither Boccuto nor Dignetti was told by the arresting officer why they were supposed to leave the school yard, nor why they were arrested. Boccuto was charged by juvenile officers with disorderly conduct and resisting arrest. He was held in a cell for several hours and then released. The charges were dismissed the next day. Dignetti was charged with disorderly conduct. He was held for three hours and then released; the charges were dismissed the next day.

Dignetti testified that, while being held at the police district headquarters, he was punched several times by a guard. The guard flatly denied any such incident. In the absence of any clear basis for assessing the relative credibility of these witnesses, I have concluded that the

evidence on this point is evenly balanced, and therefore make no finding that Dignetti was beaten.

About a month before the above incident, on September 4, 1970, at about 9 p.m., Albert Boccuto and a companion, Sammy Fabrizzo, were stopped by two police officers in the vicinity of 5th and Annsbury Streets. The officers held the boys at gunpoint, frisked them, asked them where they were going and what they were doing, and then permitted the boys to leave. It appears that the police had received numerous complaints from residents in the area, concerning groups of teenagers congregating on street corners and causing disturbances. The police response to these complaints was to disperse any crowds they saw on street corners, and to arrest anyone who failed to comply, on charges of "corner lounging" or disorderly conduct.

25. *Dwight Redding Byrd.* On October 12, 1970, at 1:15 p.m., Officers Winchester and Byrne observed one Dwight Redding Byrd, a Negro male, holding in his hand a 20-inch sword, partially removed from its wooden sheath. Several other Negro males, one of whom had a large stick in his hand, were walking away from Byrd.

Winchester approached Byrd, took the sword away from him, examined it, and advised Byrd that he was under arrest. He then attempted to place handcuffs on Byrd. Byrd pulled away, and the sword fell to the ground. In the meantime, Officer Byrne had stopped the other Negro males, and, with gun drawn, required them to lean against a wall, frisked them, and asked their identification.

As Byrd continued to struggle with Officer Winchester, flailing his arms and kicking, the unsheathed sword lay on the pavement about four feet away. Officer Byrne came to his fellow officer's assistance; neither officer picked up the sword.

After about a minute, Byrd picked up the sword and began to swing it over his head. The officers were standing in the street about five feet away from Byrd, backing away from him. Both officers drew their guns.

Byrd was speaking in a foreign tongue (possibly Arabic). He faced the officers, swinging the sword in front of his face. He stepped toward the officers, but did not point the sword at them or lunge at them.

The officers told Byrd to drop the sword. They repeated this instruction three or four times. When he failed to comply after about 30 seconds, Officer Byrne fired into Byrd's chest, and Winchester fired into Byrd's leg. Byrd fell to the sidewalk; 20 minutes later he was removed from the scene; he was pronounced dead on arrival at the hospital.

The District Attorney later ruled that the killing of Dwight Byrd was justifiable homicide.

26. *Mr. and Mrs. Leon Brown, and Edward Smalley.* On October 18, 1970, a Sunday, at about 2:30 p.m., four police officers assigned to the narcotics unit acted unreasonably in conducting a search of the residence of Mr. and Mrs. Leon Brown, 3943 North 10th Street, pursuant to a search warrant.

For present purposes, I shall assume, without deciding, that the search warrant was valid. The four officers, none of whom was in uniform, all of whom were casually dressed, knocked on the door, displayed their badges to Mrs. Brown's sister, who was looking out through the door window, and demanded entry. Without waiting for a response, they broke down the door, breaking it off its hinges. They then thoroughly ransacked the entire house.

Three officers invaded Mrs. Brown's bedroom on the second floor; she had just arisen from a nap, and was clad only in her underwear. She was ordered to remain

standing as the officers searched the bedroom. After some delay, she eventually was provided with a housecoat.

The officers emptied out drawers and closets in all of the rooms in the house, and overturned mattresses. They did not inform Mr. and Mrs. Brown the purpose of the search, until it had been in progress for several minutes. They then advised the Browns that they were looking for drugs, and checked the Browns' arms for signs of needle marks.

The police found no drugs, and left the premises after about a half hour. Before leaving, they put back some of the items which they had dumped from bureau drawers, but the premises were in considerable disorder after the police left. The front door was not repaired.

At about the same time that the above search was taking place, a similar search was conducted at 2619 West Lehigh Avenue, in which an Afro boutique shop occupied by a friend of the Browns, one Leonard Smalley, was located. Although the affidavit in support of the alleged search warrant indicated that the warrant was directed at the boutique shop, the officers searched the second and third floors of the building first, before proceeding to search the boutique shop. No one was present in the building when the police arrived. They broke the lock on the building door, searched upstairs, then broke the door to the boutique shop off its hinges and searched the shop.

No drugs were found, the merchandise was disarranged, and some items were stolen. The entire search took about a half hour.

Mr. Smalley learned of the search of his shop when, on behalf of the Browns, he inquired at the 22nd and Hunting Park Avenue Station as to the purpose of the search of the Brown residence. After observing the damage to his store, he returned to the police station on two or three occasions and asked to see the search warrant. No such warrant has ever been shown to him.

27. *Mrs. Irene Thompson.* On October 23, 1970, at about 4 p.m., an 11-year old Negro boy was caught shoplifting at a Woolworth Store on Chester Avenue. When he refused to give his name and address, the manager called the police.

Officer Leon Burke responded to the call. Holding the boy by his belt, he escorted him to the sidewalk. The boy then attempted to escape, and bit the officer on the finger. The officer lost his temper. He wrestled the boy to the sidewalk, fell on top of him, and repeatedly banged his head against the pavement. A crowd gathered, and complained of the officer's treatment of the boy.

Mrs. Irene Thompson, a black women, reasonably well educated and responsible, observed the officer's conduct. She had not known any of the persons involved previously. She was very disturbed at the incident, and made several attempts to complain about Officer Burke's conduct, and to inquire about what had happened to the boy.

The police were reluctant to listen to her; she was not permitted to talk to Officer Burke, even though he was present in the station house.

When Mrs. Thompson insisted that she wished to make a complaint, it was finally arranged that one of the police officers would listen to her. However, as she was explaining the incident to him, he kept defending the conduct of Officer Burke. Mrs. Thompson was told to return to the police station the following Monday. She did so, but was told that no one knew anything about the matter.

Mrs. Thompson has never received any information from any police or city source concerning her complaint, or concerning the boy who had been mistreated.

H. *Statistics*

At the request of the Court, certain statistical information has been furnished by the defendants. The period covered by these statistics runs from January 1, 1968 to July 1, 1970. During that period, 2,339 persons were arrested and charged with assault and battery on a police officer or resisting arrest. In 1,451 of these cases (62 percent), either no other charges were filed, or the other charges were limited to such crimes as disorderly conduct, breach of the peace, interfering with an officer, intoxication, or incitement to riot.

During the same period, 2,709 cases which included charges of resisting arrest or assault and battery on a police officer were disposed of. Seventy-eight percent of the defendants were exonerated (67 percent before trial). Only 26 percent of these cases resulted in convictions for disorderly conduct, breach of the peace, threats, or intoxication.

By way of comparison, there were a total of 97,688 arrests in 1968, of which 17,960 were for serious offenses; there were 99,932 arrests in 1969, of which 18,103 were for serious offenses; and there were 101,552 arrests in 1970, of which 20,769 were for serious offenses. The term "serious offenses", as used in the foregoing statistics, means murder, rape, robbery, aggravated assault and battery, burglary, larceny of automobile, and larceny involving goods valued at more than $50.

The COPPAR organization received approximately 200 complaints of police misconduct during the first eight months of 1970.[1]

[1] At a post-hearing conference in January 1973, both sides were afforded an opportunity to reopen the hearings in order to produce evidence of any pertinent changes in procedures, or other relevant circumstances, which may have occurred since the briefs were filed. In the absence of any request for reopening, the cases are being disposed of on the existing record.

II. DISCUSSION

Careful evaluation of all of this mass of evidence leads inescapably, and perhaps not surprisingly, to the conclusion that, while the overall situation is not as bad as the plaintiffs contend, neither is it as acceptable as the defendants contend.

At the outset, it may be appropriate to register a few general observations about the difficult problems of the police of our society, and the practical limitations upon the role of courts in resolving disputes of the kind represented by this litigation. It is a truism that the multitude of social ills afflicting our society bear most heavily upon the poor, and especially upon the black poor. These same social ills spawn much of the activity which society regards as criminal. Society as a whole, in the ghettos as well as in the suburbs, looks to the police for protection against criminal activity. The policeman is not responsible for the deplorable conditions in which the underprivileged exist, but he is charged with responsibility for dealing at first-hand with the more egregious results of these conditions. To the deprived, he can easily become the symbol of society's oppression, and the target for undifferentiated hostility generated by causes having no direct relationship to police conduct.

Police traditionally are trained and function as a quasi-military organization. Generally speaking, they are required to enforce the law as it is written. They are required to obey orders, and to exact obedience from others. The tactics of police enforcement involve a considerable measure of naked power. Dealing so frequently with persons who have no respect for law or for the police function, the policeman cannot always rely upon peaceful and reasonable persuasion as the instrument of choice.

The hazards of police work are very real and pervasive. The conduct of individual officers in stressfilled situations should not be judged by the standards of armchair hindsight.

And finally, departmental routine in a large police department is necessarily somewhat cumbersome and time-consuming. The record is replete with instances of this problem. Typically, an individual is stopped by a patrolling police officer and questioned briefly about some actual or suspected misfeasance. If he does not give a satisfactory account of himself, he is taken to the precinct office. After some delay and processing there, if further questioning is desired, he is transported to the Detective Division for interrogation and further processing. Thereafter, he is transported to the Police Administration Building in center-city ("The Roundhouse") for further questioning and, perhaps, detention, formal charges, and a preliminary hearing. Where there was probable cause for the original arrest, the entire process would seem to be unobjectionable. But the record makes clear that this practice is not limited to probable cause situations.

From the record as a whole, it is impossible to avoid the conclusion that, in the absence of probable cause for arrest, at least two classes of individuals are particularly likely to be subjected to this kind of procedure: poor blacks, and individuals who question or protest the initial police contact. It is apparent from this record that a substantial number of policemen genuinely believe (a) that if an individual is freed without formal charges within 24 to 48 hours after his initial arrest, he should not object to the inconvenience involved; (b) that a person who questions the propriety of police conduct, or refuses to cooperate with the police, should expect to be inconvenienced, or worse; and (c) that if it is ultimately established that there was probable reason to believe an

individual guilty of an offense, his treatment at the hands of the police should be judged by different standards than those applicable to the innocent. And, needless to say, such incidents are viewed by the police and the detainees from entirely different perspectives; a course of events which, to the policeman, are merely routine "police procedure" often appear to the civilian involved to be drastic and outrageous encroachments upon his liberty and privacy.

Problems similar to those presented in this case have been the subject of a great deal of learned commentary. *See,* for example, Skolnick: Justice without Trial, Law Enforcement in a Democratic Society (1966); Westley: Violence and the Police: A Sociological Study of Law, Custom, and Morality (1970); Chevigny: Police Power, Police Abuses in New York City (1969); Niederhoffer; Behind the Shield, the Police in Urban Society (1967). Two presidential commissions have addressed themselves extensively to these issues: The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police (1967), at pp. 178-207 (in which, incidentally, the Philadelphia Highway Patrol is described as a "skull-cracking division"); Report of the National Advisory Commission on Civil Disorders, Ch. 11 (1968). A review of this material suggests that the problems disclosed by the record in the present case are not new, and are fairly typical of the problems afflicting police departments in major urban areas.

The totality of the evidence in this case convincingly establishes the following general conclusions:

1. Violations of the legal and constitutional rights of citizens are committed by only a small percentage of the members of the police force.

2. Nevertheless, such violations do occur, entirely too frequently.

3. The evidence does not disclose any conscious departmental policy of racial bias, or of discriminatory enforcement on racial lines.

4. The presence of racial prejudice on the part of an individual police officer, manifested in the performance of his police duties, is unlikely to be reflected adversely in the performance ratings accorded him by his superiors.

5. Existing procedures for handling civilian complaints and for enforcement of police discipline related to civilian complaints is totally inadequate. It is the policy of the department to discourage the filing of such complaints, to avoid or minimize the consequences of proven police misconduct, and to resist disclosure of the final disposition of such complaints.

The evidence discloses that violations of legal and constitutional rights of citizens by the police are most widespread in the following areas of police activity:

(1) Arrests "for investigation"; (2) Treatment of citizens who question or criticize what the police are doing in a particular instance; (3) Charges of resisting arrest, when the arrest was unlawful in the first place; (4) extreme overreaction to actual or reported assaults upon policemen.

Before discussing the ultimate issue as to whether or not the plaintiffs are entitled to relief in this proceeding, various legal issues must be resolved.

The defendants filed motions to dismiss in both cases, pursuant to Federal Rule of Civil Procedure 41(b), apparently on the theory that the Court lacks the power to grant injunctive relief in situations of this kind. However, when a pattern of frequent police violations of rights is shown, the law is clear that injunctive relief may be

granted. *Lewis, et al.* v. *Kugler, et al.*, 446 F.2d 1343 (3d Cir. 1971).

Defendants in the *Goode* case also seek dismissal on the ground that indispensable parties (Officers DeFazio and D'Amico) were not joined. I agree that, in the absence of these individuals as parties to the lawsuit, no relief which directly affects them may properly be granted. However, the evidence concerning these two officers is relevant, and may properly be considered, in connection with the issues involving the remaining defendants.

In the *COPPAR* case, the defendants moved to dismiss the complaint on the ground that it was too vague and general to state a cause of action under § 1983. While the complaint is probably insufficient on that ground, *see Negrich* v. *Hohn*, 379 F.2d 213 (3d Cir. 1967), this defect was remedied by requiring the plaintiffs to provide a list of witnesses and a brief description of each incident charged, in advance of the hearings in this case.

The District Attorney has moved to dismiss the complaint in the *COPPAR* case. To the extent that some of the plaintiffs originally sought injunctions against pending criminal prosecutions, the motion clearly is meritorious. *Younger* v. *Harris*, 401 U.S. 37 (1972). However, this Court, early in the proceedings, declined to grant such relief, and the plaintiffs in question appeared to have abandoned this issue. In view of the District Attorney's relationship to the handling of civilian complaints against police misconduct, he was properly retained as a party to the litigation.

At an earlier stage of the proceedings, I informally granted the defense motion to dismiss the case with respect to the Black Panther Party and the Young Lords Party, because of their refusal to submit to discovery. That ruling will now be formalized. Elimination of these organizations as parties plaintiff does not, of course, preclude consideration of the evidence relating to these or-

ganizations or their members in connection with the issues raised by the other plaintiffs.

Defendants in the *COPPAR* case have also argued that COPPAR has no standing to bring this action, and is not a proper representative of the class of plaintiffs. I believe COPPAR does have the requisite standing. *See NAACP* v. *Button,* 271 U.S. 415 (1963); *Smith* v. *Board of Education of Morrilton School District,* 365 F.2d 770 (8th Cir. 1966).

On September 4, 1970, I entered an injunction in the *COPPAR* case, restraining the police from violating the constitutional rights of citizens in certain enumerated respects. The Ellis Steward incident and the Johnson and Simon incident occurred while this injunction was in effect, and plaintiffs seek an adjudication of contempt. While it appears that the order of this Court was violated, particularly in the Johnson and Simon case, this may have been due to a lack of precision in the framing of the injunctive order. Although it is a close question, I am not persuaded that the violation was willful. The police apparently were not aware that what they did amounted to an arrest.

In both cases, the captions should be amended to designate Mr. Rizzo as the Mayor, and Mr. Thomas O'Neill as the Police Commissioner, and to reflect such other personnel changes as have occurred in the interim.

As noted earlier, the evidence in this case does not establish the existence of any overall Police Department policy to violate the legal and constitutional rights of citizens, nor to discriminate on the basis of race. The record does establish, however, that such violations do occur, with such frequency that they cannot be dismissed as rare, isolated instances; and that little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence. I am convinced that, except in cases of severe injuries, existing remedies are inadequate to protect the public interest involved. Private suits for damages are expensive, time-consuming, not readily available, and not notably successful; moreover, they have no preventive effect. Except in extreme cases, criminal prosecutions are unlikely; and, in any event, given the dual role of the District Attorney's staff, such prosecutions are a most unsatisfactory vehicle for vindication of the rights involved.

Respect and admiration for the performance of the vast majority of police officers cannot justify refusal to confront the reality of the abuses which do exist. But deference to the essential role of the police in our society does mandate that intrusion by the courts into this sensitive area should be limited, and should be directed toward insuring that the police themselves are encouraged to remedy the situation.

In the course of these proceedings, much of the argument has been directed toward the proposition that courts should not attempt to supervise the functioning of the police department. Although, contrary to the defendants' assertions, the Court's legal power to do just that is firmly established, *see,* for example, *Hague* v. *CIO,* 307 U.S. 496 (1938); *Lankford* v. *Gelston,* 364 F.2d 197 (4th Cir. 1966); *Belknap* v. *Leary,* 427 F.2d 496 (2d Cir. 1970); *Lewis, et al.* v. *Kugler, et al., supra. And see The Federal Injunction as a Remedy for Unconstitutional Police Conduct,* 78 Yale L.J., 143 (1968); and *cf. Holt* v. *Sarver,* 442 F.2d 304 (8th Cir. 1971) (prison conditions), I am not persuaded that any such drastic remedy is called for, at least initially, in the present cases.

To a large extent, consideration of sweeping injunctive relief in the present cases has been obviated by the consent injunctive decree in the *Alexander* v. *Rizzo* case (C.A. No. 70-992). Although the point has not been raised by the parties, it would seem that this decree should be accorded *res judicata,* or at least collateral estoppel, effect,

at least with respect to the abuses inherent in initial police contacts and arrests "for investigation." In any event, the entry of that decree should go far to eliminate many of the abuses complained of in the present cases.

While there are additional areas of police misconduct asserted in the present case, to which a further injunctive decree might be directed, I am satisfied that the establishment of adequate procedures for handling and adjudicating civilian complaints against the police would go far to prevent further abuses, and to reduce the friction which the existing procedures, or lack of procedures, generate.

There are four principal defects in the present arrangement. (1) The departmental procedures are geared to handle infractions of police rules and regulations, yet these rules and regulations are not framed to cover specific violations of the legal and constitutional rights of civilians; (2) Complaints are handled on a "chain of command" basis, and this results in a tendency to minimize and discourage civilian complaints; (4) The existing procedures do not provide adequate opportunity for the civilian complainant to present his case, before a relatively objective tribunal; and (4) The outcome of the proceeding is not disclosed.

In attempting to frame an appropriate remedy in this litigation, the existence of sharp philosophical differences over the issue of civilian review of police activities cannot be overlooked. The defendants, and police generally, strongly oppose the entire concept of civilian review. Plaintiffs, on the other hand, appear to contend that no other solution is feasible. It is not the function of a court to attempt to resolve this doctrinal controversy; such issues are best resolved in the legislative and executive branches of government, and ultimately in the polling places. But it is the obligation of a federal court, under the Civil Rights Act, to take appropriate action to prevent recurring and otherwise predictable violations of the constitutional rights of citizens. If this can be accomplished without imposing some form of civilian review, that course of action seems preferable, since it would represent the least drastic of possible alternatives. But if, after a reasonable opportunity for experimentation, the police themselves prove unable to reduce the abuses complained of to an acceptable minimum, then some form of civilian intervention, whether by a civilian administrative agency, or by injunctive decree, may become necessary.

In conformity with the views expressed above, the defendants will be required to formulate and submit to this Court for approval, a comprehensive program for dealing adequately with civilian complaints alleging police misconduct. It is suggested that the following guidelines should be carefully considered in such formulation: (1) Appropriate revision of police manuals and rules of procedure spelling out in some detail, in simple language, the "do's and don'ts" of permissible conduct in dealing with civilians (for example, manifestations of racial bias, derogatory remarks, offensive language, etc.; unnecessary damage to property and other unreasonable conduct in executing search warrants; limitations on pursuit of persons charged only with summary offenses; recording and processing civilian complaints, etc.); (2) Revision of procedures for processing complaints against police, including (a) ready availability of forms for use by civilians in lodging complaints against police officers; (b) a screening procedure for eliminating frivolous complaints; (c) prompt and adequate investigation of complaints; (d) adjudication of non-frivolous complaints by an impartial individual or body, insulated so far as practicable from chain of command pressures, with a fair opportunity afforded the complainant to present his complaint, and to the police officer to present his defense; and (3) prompt notification to the concerned parties, informing them of the outcome.

In this connection, I note that the plaintiffs have contended that, so long as the final decision is reviewable by the Police Commissioner, any such procedure is likely to prove inadequate. I am not persuaded that this necessarily follows. Some worthwhile analogies may perhaps be derived from the recent improvements in handling disciplinary matters in the military forces. It has apparently been feasible in the Armed Forces to provide relatively impartial adjudications, essentially unfettered by command pressures, while still retaining control by the military. If, in notifying the complainant as to the disposition of his complaint, a brief statement of the reasons for the disposition were also required, arbitrary or erroneous rejection of legitimate complaints would be unlikely.

It should be mentioned that the foregoing guidelines are consistent with generally recognized minimal standards for improving police-community relations. They impose no substantial burdens on the Police Department, and pose no threat to vigorous law enforcement. They afford protection to the accused policeman, as well as to the complaining civilian.

In conclusion, it should perhaps be emphasized that this Court has not decided that the plaintiffs and the class they represent have a constitutional right to improved departmental procedures for handling civilian complaints against police. What the Court has decided is that, under existing circumstances, violations of constitutional rights by police do occur in an unacceptably high number of instances; that, in the absence of change in procedures, such violations are likely to continue to occur; and that revision of procedures for handling civilian complaints is a necessary first step in attempting to prevent future abuses.

An appropriate order will be entered in each of the two cases.

JOHN P. FULLAM

J.

ORDER DATED MARCH 14, 1973

AND NOW, this 14th day of March, 1973, it is ORDERED:

1. The Black Panther Party and the Young Lords Party are stricken from the caption of the case as plaintiffs, and as to those plaintiffs the complaint is DISMISSED.

2. The remaining plantiffs are directed to make appropriate amendments to the caption of the case, to reflect changes in personnel which have occurred during the pendency of this lawsuit.

3. The defendants, acting jointly or separately, as they may prefer, are directed, within thirty (30) days from the date of this Order, to submit to this Court for its approval a comprehensive program for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court filed this date. A copy of such proposal shall be submitted to counsel for the plaintiffs. Counsel for the plaintiffs may submit counterproposals, if desired, within ten (10) days thereafter.

JOHN P. FULLAM

J.

Order

ORDER DATED MARCH 14, 1973

AND NOW, this 14th day of March, 1973 it is ORDERED:

1. The plaintiffs are directed to make appropriate amendments to the caption of the case, to reflect changes in personnel which have occurred during the pendency of this lawsuit.

2. The defendants, acting jointly or separately, as they may prefer, are directed, within thirty (30) days from the date of this Order, to submit to this Court for its approval a comprehensive program for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court filed this date. A copy of such proposal shall be submitted to counsel for the plaintiffs. Counsel for the plaintiffs may submit counterproposals, if desired, within ten (10) days thereafter.

JOHN P. FULLAM

J.

Letter, John McNally, Esq.

LETTER, JOHN McNALLY, ESQ., DATED APRIL 12, 1973, WITH ENCLOSURES (DRAFT OF "DIRECTIVE 127" AND ATTACHMENTS)

Hon. John P. Fullam
United States District
Court for the Eastern
District of Pennsylvania
6049 U. S. Court House
Ninth and Market Street
Philadelphia, Pa. 19107

April 12, 1973

Re: Council of Organizations on
Philadelphia Police Accountability and Responsibility, et al
vs.
James H. J. Tate, et al
Civil Action—No. 70-2430

Gerald G. Goode, et al
vs.
James H. J. Tate, et al
Civil Action—No. 70-491

Dear Judge Fullam:

The Police Department of the City of Philadelphia has taken the following steps to comply with your Decree of March 14, 1973, in the above case:

1. Manuals which are already in existence are herewith submitted, which show the instructions given to all incoming policemen in regard to community relations and their actions toward citizens. I believe that these manuals comply with the first guideline set forth in your Opinion.

2. The procedures for processing civilian Complaints have been completely revised. There was in existence a Police Directive 127, which has been

amended. To show the complete change, I am enclosing a copy of the existing regulation which went into effect on March 31, 1967, and the present regulation which is being adopted as of now.

A new form which will be supplied to each Police District and to which any complaining citizen will have access at his nearest Police District.

3. The new procedures, you will note, provide for immediate investigation, the sifting out of frivolous complaints and an adjudication of non-frivolous complaints by the Board of Inquiry.

The Notice of Hearing will state that the complaintant may be present with both witnesses and an attorney.

4. There is a provision in the new Directive 127 for prompt notification to the concerned party.

I have also attached a copy of the Control Log, which will be used in the recording of these complaints. Each Complaint Form will have a number so that there will have to be an explanation by the various districts of any missing numbers, which should make it impossible for a complaint to be recorded and then thrown in the waste basket.

The Training Manuals which I have submitted cover many subjects not directly relating to the police contacts with citizens. I have suggested to the Police Department that we immediately prepare a manual which will be limited to the subjects contained in your Opinion and, this manual will be handed out to the policemen under separate cover.

Sincerely yours,

JOHN M. MCNALLY, JR.
First Deputy City Solicitor

JMMcN:cmg
Enc.

DEFENDANTS' PROPOSED ORDER FOR IMPLEMENTATION OF THE MARCH 14, 1973 ORDER OF THE COURT DATED APRIL 12, 1973

PHILADELPHIA POLICE DEPARTMENT — Directive 127

Subject: CITIZEN'S COMPLAINTS AGAINST POLICE

I. POLICY

A. All citizen's complaints against police officers shall be accepted and investigated and complainants will be notified of the action taken by the Police Department.

B. Special pre-numbered complaint forms entitled "Citizen's Complaint Report" shall be supplied in quantity to all Police Districts and Units and each district/unit shall be accountable for the allocated numbers issued.

C. A control log of sequential numbers shall be maintained in each Operations Room.

D. The Internal Affairs Bureau shall be the central control agency for the Police Department in all cases of citizen's complaints against police.

E. A Staff Inspector will be available to receive complaints from the nine police divisions on a 24-hour basis.

II. PROCEDURE FOR RECORDING AND PROCESSING COMPLAINTS

A. The Operations Supervisor in the district/unit receiving the complaint shall:

1. Provide to the complainant a "Citizen's Complaint Report" and instruct the complainant to fill in the required information on the form and sign it.
2. Record on the Control Log the Report Number, the D.C. Number, the complainant's name, address and

date and time of complaint and name of Staff Inspector notified.

3. Prepare a 75-48, completing all block headings and Code 2703, "Complaints Against Police".
4. Notify the Staff Inspector on duty and record his name, date and time of notification on the Citizen's Complaint Report.
5. Affix signature and badge number.
6. Distribute the completed Citizen's Complaint Report as follows:

   Original — Chief Inspector, Internal Affairs Bureau
   1st Copy — Staff Inspector notified
   2nd Copy — District/Unit Commanding Officer
   3rd Copy — Complainant
7. Distribute 75-48 as follows:

   White — Reports Control and Review
   Yellow — District/Unit Commander
   Pink — Staff Inspector notified

B. The Staff Inspector on duty shall:

1. Evaluate complaint and if possible, interview the complainant by phone and select one of the following:
   a. If an immediate investigation is indicated, confer with the pertinent Chief Inspector who will ensure that a proper investigation is initiated.
   b. Refer to the pertinent District/Unit Commanding Officer for investigation.

C. Assigned Investigator will prepare an Investigation Report (75-49) and distribute as follows:

Original — Reports Control and Review
Yellow — Chief Inspector, Internal Affairs Bureau

Pink — Pertinent Detective Division Commander (if investigation reveals a crime has been or may have been committed)
Goldenrod — Staff Inspector notified
Green — Pertinent District/Unit Commanding Officer
Blue — Police Department's legal advisor (Hold until investigation is completed and submit with copies of all related case material)

III. COMPLAINTS RECEIVED IN DISTRICT OTHER THAN THE DISTRICT OF OCCURRENCE

A. Complaints received in a district or unit other than the district or unit of occurrence shall be processed in the following manner:

1. The Operations Supervisor in the district/unit where complaint is being reported shall:
   a. Have the complainant fill out a "Citizen's Complaint Report" as outlined in Section II of this directive.
   b. Obtain a D.C. Number from the district of occurrence and insert on "Citizen's Complaint Report" and on the Control Log.
   c. Notify Staff Inspector on duty.
   d. Prepare 75-48 and distribute as follows:

      Original — Reports Control and Review
      Yellow — Pertinent District/Unit Commander
      Pink — Staff Inspector notified

IV. ANONYMOUS COMPLAINTS

A. Complaints received from persons who wish to remain anonymous shall be received, recorded and processed in the same manner as outlined herein with the excep-

tion that the Operations Room Supervisor shall fill out the "Citizen's Complaint Form" and in space provided for complainant's signature, shall indicate "anonymous complainant".

B. The Staff Inspector on duty shall evaluate the anonymous complaint and determine the degree of investigation to be given such complaint

V. COMPLAINTS RELATIVE TO CRIMES

A. If the complaint alleges to a crime and subsequent investigation establishes the fact, the provision as outlined in Directive 79 shall be followed.

VI. RESULTS OF INVESTIGATION

A. On all complaints where an investigation is initiated, a copy of the case and the results of the investigation will be forwarded to the Police Department's Legal Advisor, who will contact the complainant and inform him/her of the action taken by the Police Department.

B. If the matter is referred to the Police Board of Inquiry for review and recommendation to the Commissioner, the complaint shall be advised of such referral.

VII.

In every case where referral is made to the Police Board of Inquiry, the complainant shall be given not less than ten (10) days written notice of the hearing. Such notice shall expressly state that complainant has the right to appear, with or without counsel and with such other witnesses as he or she desires to present.

VIII.

The hearing shall be conducted by the Police Board of Inquiry which shall make its decision and recommendation to the Commissioner as promptly as pos-

sible. The Commissioner will provide the Legal Advisor with a copy of the decision and recommendation so that he may inform complainant in accordance with paragraph VI. A.

CITIZEN COMPLAINT REPORT

Name (Last) (First) (Middle) | Address (City) (State)

Telephone Number | Date of Birth | Male ☐ Female ☐ | Martial Status | Occupation

Location Complaint Reported | Time Complaint Reported | Location of Incident | Date of Incident | Time of Incident

Representative/Interpreter/ Person Assisting | Address | Telephone Number

Name(s) of Officer(s) Complained Against (If Known) | Rank | Badge Number | District/Unit | Assignment (Foot, Auto)

Age | Height | Weight | Color Hair | Color Eyes | Race | Scars

What Occurred?

What were you doing before the incident?

What was the officer doing before the incident?

This case is heard by the Police Board of Inquiry will you be willing and able to appear against the police officer involved?

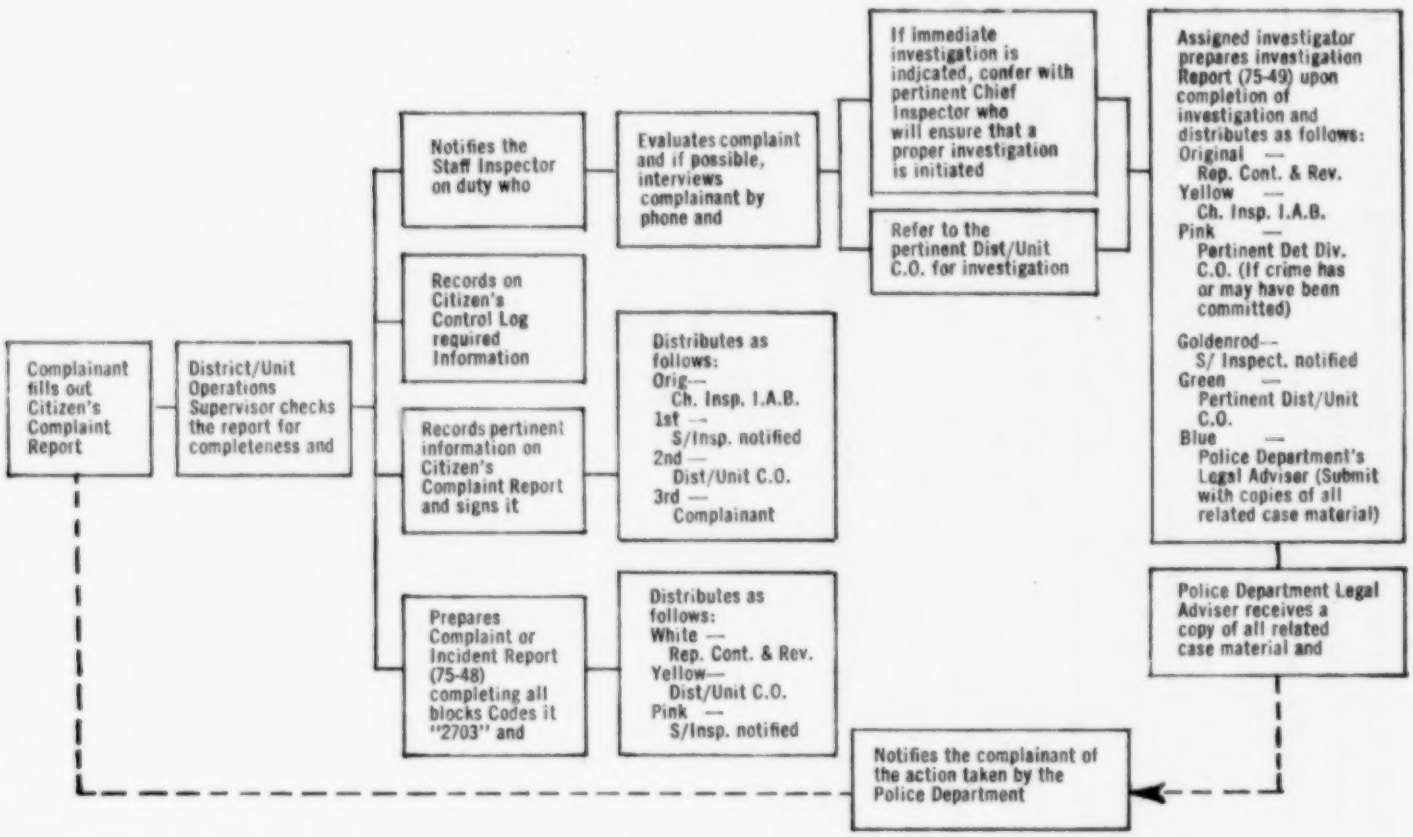
Signature of complainant | Date

Staff inspector notified | Date and Time Notified

Signature of officer receiving complaint

CITIZEN'S COMPLAINT CONTROL LOG (Type or Print—Use Ball Point Pen)			City of Philadelphia POLICE DEPARTMENT		DISTRICT/UNIT
Report Number	DC Number	Complainant's Name and Address	Date & Time Received	Received By:	Staff Inspector Notified

REPORT NUMBERS MUST BE IN CHRONOLOGICAL ORDER—VOIDED NUMBERS MUST BE FULLY EXPLAINED—ALL VOIDED REPORTS MUST BE SENT INTACT TO INTERNAL AFFAIRS BUREAU.



You are hereby notified that a hearing will be held in the above Complaint in Room_____, Police Headquarters, 8th and Race Streets, on_____, at_____A.M. P.M. You are requested to be present with such witnesses as you care to produce and with counsel if you so desire.

If you require additional information pertaining to this hearing, you may contact the undersigned by calling MU 6-3281, from 9:00 A.M. until 5:00 P.M., Monday through Friday, or by writing to the undersigned at the address indicated above.

FOR THE POLICE COMMISSIONER:

ANGELO A. PIROLLO
Lieutenant #122
Advocate
Police Board of Inquiry

AAP/cm

PHILADELPHIA POLICE DEPARTMENT — Directive 127 (3-31-67)

SUBJECT: COMPLAINTS AGAINST POLICE OFFICERS

I. POLICY

A. All complaints against police officers received by members of this department shall be recorded and referred to the Commanding Officer of district/unit for investigation.

II. PROCESSING COMPLAINTS

A. Complaints received will be brought to the attention of the Operations Room Supervisor. Complaints shall be recorded on a Complaint and Incident Report (75-48). A district complaint number shall be assigned each complaint received. These reports shall be coded 2703 "COMPLAINTS AGAINST POLICE".

B. Distribution:
White —General Services
Yellow—District/Unit Commander
Pink —Staff Inspectors

C. An Investigation Report (75-49) will be prepared at the direction of the Commanding Officer and shall contain the following information:
1. Statement of Complaint
2. Statement of Officer
3. Results of Investigation
4. Action Recommended

D. Distribution of Investigation Report (75-49)
Original —General Services Division
Yellow —District File

Pink —Detective Division (if applicable)
Goldenrod—Chief Inspector
Green —Division Commander
Blue —District or Unit Commander

III. COMPLAINTS RECEIVED IN DISTRICT OTHER THAN THE DISTRICT OF OCCURRENCE

A. Complaints received in a district or unit other than the district or unit of occurrence shall be processed by:
   1. Operations Room Supervisor receiving complaint shall obtain a District Complaint number charged to the district of occurrence, and shall prepare an Incident and Complaint Report (75-48).
   2. Operations Room Supervisor of the district/unit receiving complaint shall immediately notify the lieutenant of the district/unit in which the complaint occurred. The lieutenant in the district of occurrence shall determine the urgency of forwarding the Incident and Complaint Report (75-48).
   3. Operations Room Supervisor of the district/unit receiving complaint shall record on the "Sending and Receiving Sheet" the date, time and name of person notified concerning the police complaint.

IV. ANONYMOUS COMPLAINTS

A. Complaints received from persons who wish to remain anonymous shall be processed in the same manner as any other complaint. Failure to take anonymous complaints may be ignoring legitimate grievances. Commanding Officers shall evaluate the degree of investigation to be given anonymous complaints. In all instances an Incident and Complaint Report (75-48) shall be prepared.

V. COMPLAINTS RELATIVE TO CRIMES

A. The lieutenant shall evaluate all complaints and notify the District Commander immediately, when necessary.

B. If the complaint establishes a crime the Detective Division Supervisor shall be notified and such notification shall be recorded on the district/unit "Sending and Receiving" sheet.

BY COMMAND OF THE POLICE COMMISSIONER

Directive 127

LETTER, PETER HEARN, ESQ., DATED APRIL 24, 1973, WITH ENCLOSURES

April 24, 1973

Honorable John P. Fullam
6049 United States Court House
Ninth and Chestnut Streets
Philadelphia, Pennsylvania 19107

RE: Gerald G. Goode, et al., v. Frank L. Rizzo, et al.,
Civil Action No. 70-491

Dear Judge Fullam:

I am enclosing duplicate copies of:

1. Plaintiffs' Memorandum in Response to Defendants' Plan for the Handling of Citizen Complaints Against Police; and

2. Proposed Order.

The originals of these documents have been filed with the Clerk.

Plaintiffs request an early meeting with the Court at which counsel for defendants can give his comments to plaintiffs' counterproposal and the form of the Court's eventual order can be discussed.

Respectfully submitted,

Peter Hearn
PH/gnc—Enclosures
cc: John M. McNally, Jr., Esquire (w/encs.)
Robert M. Landis, Esquire (w/encs.)
Frederick L. Ballard, Esquire (w/encs.)
Charles C. Hileman, Esquire (w/encs.)
Harry Lore, Esquire (w/encs.)

PLAINTIFFS' PROPOSED ORDER FOR IMPLEMENTATION OF THE MARCH 14, 1973 ORDER OF THE COURT DATED APRIL 24, 1973

In The United States District Court
For The Eastern District of Pennsylvania

Gerald G. Goode, et al.
v.
Frank L. Rizzo, et al.

CIVIL ACTION NO. 70-491

ORDER

And Now, this day of , 1973, after consideration of the proposals and counterproposals presented to the Court, pursuant to the Opinion and Order entered March 14, 1973, concerning the formulation of procedures by the Philadelphia Police Department for the receipt, investigation and disposition of civilian complaints concerning police misconduct, It Is Hereby Ordered that:

1. Defendant Joseph F. O'Neill, Police Commissioner, shall forthwith promulgate as an intra-departmental directive procedures for the receipt, investigation and disposition of civilian complaints of police misconduct, substantially in the form of the procedures attached to this Order as Appendix "A". Such directive shall, in addition to normal departmental distribution, be posted prominently in a conspicuous position at the reception desk of the Police Administration Building, at all district/unit headquarters, at the Mayor's Office for Information and Complaints, at the reception area of the Philadelphia Commission on Human Relations, and at such other places as the Commissioner may determine to be appropriate for the effective dissemination of information to individuals having contact with Philadelphia police officers.

Copies of the directive shall be maintained in quantity at all of the above locations and shall be provided upon request to any persons either specifically requesting copies of the directive or inquiring generally into the procedures for lodging complaints against police officers.

2. (a) Within fifteen (15) days from the date of this Order, the Philadelphia Police Department shall promulgate a form (Citizen's Complaint Report) for the use of complaining parties in lodging complaints against police officers.

(b) The Citizen's Complaint Report shall designate and provide adequate space for, the names, address and telephone number of the complainant; the name, address and telephone number (if known) of the alleged victim of police misconduct if other than the complainant; the name, badge number or other identifying characteristics of the police officer(s) against whom the complaint is lodged; the date, time and location of the incident giving rise to the complaint; a narrative description of the events giving rise to the complaint; the names, addresses and telephone numbers of other witnesses to the alleged incident (if known); the names, badge numbers, or other identifying characteristics of other Police Department personnel witnessing or involved in the incident giving rise to the complaint; a statement whether the complainant, the alleged victim of police misconduct (if other than the complainant) or any other witness to the alleged incident was questioned, detained, arrested and/or charged with criminal behavior as a result of the events giving rise to the complaint; the name, address and telephone number of any attorney or other representative of the complainant to whom communications concerning the complaint, its investigation and disposition should be addressed in lieu of the complainant (applicable only where the victim of

the alleged police misconduct is himself the complainant); a place for the signature of the complainant.

(c) Within five (5) days following receipt of the proposed form by the Court and by the attorneys for plaintiffs herein, the attorneys for plaintiffs shall forward to the Court their comments and alternative suggestions, if any.

. (d) Within thirty (30) days from the further Order of this Court approving a form for the receipt of complaints, the Philadelphia Police Department shall cause sufficient copies of the approved Citizen's Complaint Report to be printed and distributed in accordance with the further provisions of this Order.

(e) Sufficient quantities of the Citizen's Complaint Report shall at all times be maintained at the following locations: a designated office within the Police Administration Building; all district/unit headquarters; the Mayor's Office for Information and Complaints; the main office of the Philadelphia Commission on Human Relations; a designated office of the District Attorney's Office.

3. Civilian complaints of police misconduct which have been, or may be, received by the Philadelphia Police Department between the entry of the Order of this Court dated March 14, 1973 and the date on which an approved Citizen's Complaint Report is promulgated in accordance with the foregoing paragraph 2 of this Order shall be processed in accordance with the procedures attached hereto, notwithstanding the initial unavailability of the official Citizen's Complaint Report form. All persons who have lodged complaints during such interim period shall be notified in writing of the existence of the directive and of the official complaint form, which notice shall enclose copies of the directive and of the approved form. Failure

of any person to resubmit his complaint upon the approved form shall not, however, constitute cause for the termination of the investigation and disposition of his complaint in the manner provided in the attached procedures.

4. Within thirty (30) days from the date of this Order, the Philadelphia Police Department shall file with the Court and serve upon counsel for plaintiffs a copy of the proposed manual for the training of police recruits, limited to the matters expressed in the Opinion and Order of this Court dated March 14, 1973. Within fifteen (15) days thereafter plaintiffs may file with the Court and serve upon defendants their additional or alternative suggestions, if any, concerning the contents of such manual.

5. Within sixty (60) days from the date of this Order, defendants shall file with the Court and serve upon plaintiffs a detailed report on the state of their compliance with this Order, including the number of complaints received and being processed in conformity with the attached procedures. In addition, defendants shall file with the Court and serve upon plaintiffs copies of the directive promulgated by the Police Commissioner and of the approved Citizen's Complaint Report forms as soon as the directive and forms have been printed and made available in conformity with this Order.

BY THE COURT:

J.

APPENDIX "A"

PHILADELPHIA POLICE DEPARTMENT Directive 127

Subject: CITIZEN'S COMPLAINTS AGAINST POLICE

I. POLICY

A. All citizen's complaints against police officers shall be received, investigated and disposed of in accordance with the procedures set forth herein, and complainants will be notified of the action taken by the Police Department.

B. Copies of this directive and special pre-numbered complaint forms entitled "Citizen's Complaint Report" shall be supplied in quantity to all Police Districts and Units and each district/unit shall be accountable for the allocated numbers issued. Additional copies of this directive and of such forms shall be supplied in quantity to the Philadelphia Commission on Human Relations and to the District Attorney's office.

C. A control log of sequential numbers shall be maintained in each Operations Room.

D. The Internal Affairs Bureau shall be the central control agency for the Police Department in all cases of citizen's complaints against police.

E. A Staff Inspector will be available to receive complaints from the nine police divisions on a 24—hour basis.

F. Either upon specific request, or in the event that a person requests general information concerning the lodging of civilian complaints against police officers, all departmental personnel shall refer such person to the nearest location where copies of the Citizen's Complaint Report may be obtained.

II. PROCEDURE FOR RECORDING AND PROCESSING COMPLAINTS

A. The Operations Supervisor in the district/unit receiving the complaint shall:

1. Provide to the complaint a Citizen's Complaint Report and instruct the complainant to fill in the required information on the form and sign it. In no event shall any Departmental personnel attempt to discourage or otherwise influence any person from lodging his complaint.
2. Record on the Control Log the Report Number, the D.C. Number, the complainant's name and address, the date and time of the complaint, and the name of Staff Inspector notified.
3. Prepare a 75-48, completing all block headings and Code 2703, "Complaints Against Police."
4. Notify the Staff Inspector on duty and record his name, date and time of notification on the Citizen's Complaint Report.
5. Affix signature and badge number.
6. Distribute the completed Citizen's Complaint Report as follows:

   Original —Chief Inspector, Internal Affairs Bureau
   1st Copy—Staff Inspector notified
   2nd Copy—District/Unit Commanding Officer
   3rd Copy—Complainant
7. Distribute 75-48 as follows:

   White —Reports Control and Review
   Yellow —District/Unit Commander
   Pink —Staff Inspector notified

B. The Staff Inspector on duty shall evaluate the complaint and if possible, interview the complainant by phone. If an immediate investigation is indicated, the Staff Inspector shall confer with the pertinent Chief Inspector who will ensure that a proper investigation is initiated.

III. COMPLAINTS RECEIVED IN DISTRICT OTHER THAN THE DISTRICT OF OCCURRENCE

A. Complaints received in a district or unit other than the district or unit of occurrence shall be processed in the following manner:

1. The Operations Supervisor in the district/unit where complaint is being reported shall:
   a. Have the complainant fill out a Citizen's Complaint Report as outlined in Section II of this directive.
   b. Obtain a D.C. Number from the district of occurrence and insert on Citizen's Complaint Report and on the Control Log.
   c. Notify Staff Inspector on duty.
   d. Prepare 75-48 and distribute as follows:

      Original —Reports Control and Review
      Yellow —Pertinent District/Unit Commander
      Pink —Staff Inspector notified

IV. INVESTIGATION OF COMPLAINTS

A. Upon receipt of the Citizen's Complaint Report, the Chief Inspector, Internal Affairs Bureau, shall immediately assign a member of his staff who shall have responsibility for the investigation of the alleged incident. All such investigations shall be initiated and

completed by the staff of the Internal Affairs Bureau and no such complaint shall be referred for investigation to the commanding officer of the police officer against who the complaint is lodged or to any other officer of the Philadelphia Police Department.

B. The investigation by the Internal Affairs Bureau shall include, but need not be limited to, the following: interviews with the complaining witness, the alleged victim of police misconduct (if other than the complaining witness), and all other witnesses to the incident who are indicated on the complaint form; interviews with the police officer against whom the complaint is lodged and all other police officers witnessing or involved in the alleged incident; interviews with all other witnesses to the alleged incident who became known to the investigating officer as a result of his investigation; view and analysis of all physical evidence, if any, associated with the alleged incident; in the event that a criminal complaint has been lodged against any witness or participant in the event, a review and analysis of the investigation file compiled by the Police Department or the District Attorney's office in connection with such criminal complaint; such other investigative steps as may appear appropriate in the experience of the assigned investigator.

C. The assigned investigator shall attempt to secure written statements from all participants in and witnesses to the alleged incident but, where any witness or participant is unwilling to make a signed written statement, the assigned investigator shall provide his own written summary of the oral statement, if any, provided by such participant or witness. No participant or witness shall be required or coerced into making an oral or written statement against his will. Where a written statement is given and signed by a participant or

witness, the assigned investigator shall provide the person making such statement with a copy.

D. All investigations shall be completed within 45 days from the date of receipt of the complaint form by the Internal Affairs Bureau, except for extenuating circumstances stated in the file and approved by the Chief Inspector, Internal Affairs Bureau.

E. 1. When a complainant is unable to identify the police officer against whom a complaint is lodged by name or badge number, the complaint shall be forwarded to the Internal Affairs Bureau and the investigation shall commence in accordance with the procedures set forth above. In addition to the procedures set forth above, however, the assigned investigator shall make every effort to assist the complainant in making a positive identification of the police officer.

2. Where sufficient facts are adduced by a complainant (e.g. identifying number of police car, identity of other police officers in the vicinity and participating or witnessing the event, patrol sector, time and date, physical description and the like), the assigned investigator shall provide the complainant with the opportunity to view photographs of the population of the police officers most likely to include the officer against whom the complaint is lodged or, where possible, shall provide the complainant with other opportunity to make a positive identification.

F. 1. Upon completion of his investigation, the assigned investigator will prepare an Investigation Report (75-49) and distribute as follows:

Original —Reports Control and Review
Yellow —Chief Inspector, Internal Affairs Bureau

Pink —Pertinent Detective Division Commander (if investigation reveals a crime has been or may have been committed)
Goldenrod —Staff Inspector notified
Green —Pertinent District/Unit Commanding Officer
Blue —Police Department's legal advisor (hold until investigation is completed and submit with copies of all related case material).

2. Together with the yellow copy of the Investigation Report (75-49) the assigned investigator shall forward the entire investigative file (which shall include the Citizen's Complaint Report, or other report of complaint and all investigative notes and statements) to the Chief Inspector, Internal Affairs Bureau.

3. The Chief Inspector, Internal Affairs Bureau, or a Staff Inspector assigned to him, shall promptly review the entire file and shall determine the accuracy of the Investigation Report provided by the assigned investigator. Upon completion of the review (including revision and redistribution of the Investigation Report if necessary or the completion of further investigation which the Chief Inspector may direct), the entire file shall be forwarded to the Police Commissioner together with a recommendation of the Chief Inspector, Internal Affairs Bureau, concerning the appropriate disposition of the complaint.

4. Except for extenuating circumstances stated in the file, the file and the recommendation of the Chief Inspector, Internal Affairs Bureau, shall be forwarded to the Police Commissioner within 50 days

of receipt by the Internal Affairs Bureau of the Citizen's Complaint Report.

V. *ANONYMOUS COMPLAINTS*

A. In all instances in which an anonymous complaint is received by a member of the Police Department concerning allegations of misconduct, the individual receiving the complaint shall notify the anonymous complainant of the availability of the procedures for lodging a formal complaint.

B. Should the anonymous complainant persist in his desire to remain anonymous, the individual receiving the complaint shall elicit all facts which the complainant can provide and shall record and process the complaint in the same manner as outlined herein with the exception that the Operations Room Supervisor shall fill out the "Citizen's Complaint Form" and in space provided for complainant's signature, shall indicate "anonymous complainant".

C. Upon receipt, the Internal Affairs Bureau shall make such investigation of the alleged incident as is possible based upon the facts presented. Where the information permits the identification of the alleged victim of police misconduct or of any witness to the alleged incident, the investigating officer shall contact the alleged victim (or shall contact such other witnesses in an attempt to determine the identity of the alleged victim) and shall inform him of the opportunity to lodge a formal complaint.

D. In the event that the alleged victim of police misconduct is identified, contacted by the investigating officer and informed of the formal complaint procedures, the failure of the alleged victim to execute a formal complaint shall be grounds for termination of the investigation. Where, however, the alleged victim

cannot be identified but investigation of the facts adduced by the anonymous complainant provides supportive evidence for an act of police misconduct by an identified police officer, the investigating officer shall complete the investigation to the extent possible and shall submit his report in the manner herein provided.

VI. *COMPLAINTS RELATIVE TO CRIMES*

A. If the complaint alleges a crime and subsequent investigation establishes the fact, the provision as outlined in Directive 79 shall be followed.

VII. *DISPOSITION OF COMPLAINTS*

A. Upon receipt of the file and the recommendation of the Chief Inspector, Internal Affairs Bureau, the Commissioner of Police or a Deputy Commissioner assigned by him, shall review the entire file and determine the appropriate disposition of the complaint.

B. 1. In all cases in which the facts are not in dispute and Commissioner determines that the accused police officer is guilty of misconduct, the Commissioner shall impose such sanctions upon the offending officer as he shall deem appropriate.

2. In all cases in which the file discloses that the facts concerning the charge are in dispute and require resolution in order to determine whether the officer is guilty of improper conduct, the Commissioner shall certify the complaint to the Police Board of Inquiry ("Board") for a hearing.

3. In all cases in which the facts are not in dispute and the Commissioner determines either that there is no probable cause to believe that the police officer committed the alleged act or that the act complained of did not constitute improper behavior,

the Commissioner may certify the file closed and the investigation complete and direct that no further action to be taken in regard to the complaint.

C. 1. The action of the Commissioner in disciplining the offending officer, in certifying the complaint to the Board or in terminating the investigation shall be communicated in writing, by certified mail, to the complainant and to the alleged victim of the police misconduct (if other than the complainant) or to the attorney or other representatives of the alleged victim identified in the Citizen's Complaint Report. The action of the Commissioner shall also be so forwarded in writing to the officer against whom the charge was made.

2. Except for extenuating circumstances stated in the file, the determination of the Commissioner and the notice to the parties to the complaint shall be made within 60 days from the receipt of the complaint by the Internal Affairs Bureau.

3. In those instances in which the Commissioner terminates the investigation without certification to the Board for hearing, the notice to the complainant and to the alleged victim shall include a summary of the investigative findings and the reason for the Commissioner's action, and shall set forth the procedure stated herein below for review of the Commissioner's determination.

4. When the Police Commissioner determines to terminate the investigation and close the file without hearing, the alleged victim of police misconduct may, within 10 days from receipt of notice by the Commissioner, make written request of the Board for a review of the Police Commissioner's determination. When timely request is made, each

member of the Board, or the Board sitting together, shall review the entire file and, where two or more members of the Board believe that further inquiry is warranted, the Board shall so notify the Commissioner who shall promptly certify the complaint for hearing. Notice of the determination of the Board shall be given in writing by the Commissioner to the alleged victim or to his attorney or other representative designated in the Citizen's Complaint Report.

VIII. *HEARINGS*

A. Upon certification by the Commissioner of a complaint to the Board for hearing, the Board shall schedule a hearing to be held within 20 days from the certification of a complaint. Not less than 10 days' written notice of the time and place of the hearing shall be given by certified mail to the complainant and to the alleged victim of the police misconduct (if other than the complainant) or to his attorney or other representative designated in the Citizen's Complaint Report, and to the police officer charged with misconduct.

B. Continuances or other delays in the scheduled hearing date may be granted only by a member of the Board or a duly authorized administrative assistant of the Board, in writing, for cause given by the party requesting such continuance or delay. Where a continuance is granted, the hearing shall be rescheduled to be held within 10 days from the date of the first scheduled hearing, if possible, and notice shall be given to the parties by certified mail.

C. Hearings shall be informal and strict rules of evidence will not be applied. The assigned investigator and any officers against whom charges have been placed shall attend. All parties may be represented by counsel or

other representative and shall have the right to present evidence and to examine and cross-examine witnesses. A stenographic record shall be kept and shall be made available, at cost, to any party to the proceedings requesting same. All hearings shall be open to the public, except that hearings may be closed by the Board where necessary to maintain order.

D. The Board, after hearing, shall make written findings of fact and based thereon shall find the police officer or officers against whom the complaint has been lodged either "guilty" or "not guilty" of misconduct. The failure of the alleged victim of police misconduct to appear and to present evidence may, in the discretion of the Board, constitute grounds for termination of the hearing and the entrance of a "not-guilty" finding. Copies of the Board's findings of fact and of the Board's recommendation, if any, to the Commissioner for disciplinary action against a police officer found "guilty" of misconduct shall be forwarded to all parties by certified mail and to the Commissioner of Police.

E. The Commissioner may approve or reject the findings and/or recommendations of the Board within 30 days following receipt of their written findings of fact and recommendation, if any. If rejected, the Commissioner may modify the disciplinary action recommended by the Board or may reinstitute proceedings before the Board in accordance with existing departmental disciplinary procedures. The determination of the Commissioner to accept, modify or reject the findings and recommendation of the Board shall be transmitted in writing to all parties and to the Board.

IX. *MAINTENANCE OF RECORDS*

A. Following determination by the Commissioner of the final disposition of the complaint, the entire investi-

gative file or a true copy of the entire file and a copy of the written findings and recommendation of the Board, if any, shall be maintained at a designated location in the Police Administration Building and shall be made available to the public during normal working hours. All files, records, findings and recommendations shall be maintained permanently, and shall be made available for inspection as aforesaid for not less than two (2) years following the date of final disposition of the complaint by the Commissioner.

B. At all times following completion of the investigation by the Internal Affairs Bureau, the entire investigative file, the Investigation Report, all physical evidence, if any, shall be made available upon request for inspection by the complaint, by the alleged victim of police misconduct (if other than the complainant) or the attorney or other designated representative of the alleged victim.

C. A copy of the final determination of the Commissioner shall be maintained in the personnel file of the officer or officers involved together with the findings and recommendations of the Board, if any. In those instances in which a complaint is terminated prior to a hearing, a copy of the complaint and of the determination of the Commissioner shall likewise be maintained in the personnel file of the officer or officers involved. The personnel file of the officer or officers involved shall not be available to the public.

X. *CIVIL SERVICE PROCEDURES*

The within procedures shall be in addition to and not in derogation of the procedures existing from time to time for preservation of the rights of police officers pursuant to the Civil Service Code and Regulations of the City of Philadelphia.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-491

GERALD G. GOODE, et al.

v.

FRANK L. RIZZO, et al.

PLAINTIFFS' MEMORANDUM IN RESPONSE TO DEFENDANTS' PLAN FOR THE HANDLING OF CITIZEN COMPLAINTS AGAINST POLICE

In response to the court's Order of March 14, 1973, the defendants[1] have submitted to the Court for its approval a program for handling citizen complaints alleging police misconduct. Under the same order, plaintiffs were given an opportunity to submit comments and any counter-proposals they wished to make. The following is submitted pursuant to that Order.

A. *Defendants' Proposed Program.*

Defendants' proposed program represents little more than a cosmetic patch-up of a previous program (Directive 127, dated March 31, 1967) which was inadequate in concept and ignored in practice. Their proposal fails to remove the complaint procedure from the chain of command as the Court has directed. There is no clear designation of responsibility for investigation. There is no statement of what minimum elements the investigation must include. There is no standard to determine when a case should be submitted to the Police Board of Inquiry for a hearing. The procedures to be used at such a hearing are

[1] By means of a Substitution filed with the Court on March 19, 1973, the original defendants have been replaced by those individuals now holding the offices involved in this litigation.

not spelled out. And finally, nowhere in the proposed program is it stated who will make the decision concerning the validity of a complaint and what, if any, disciplinary steps are indicated.

To remedy these defects, plaintiffs have submitted a new plan which adheres as closely as possible to the provisions of Directive 127 insofar as the routing of documents and the imposition of responsibility are concerned but which meets the minimum standards plaintiffs believe are necessary to achieve the objectives mandated by the Court.

B. *Plaintiffs' Program.*

Initially, it should be noted that the plaintiffs' program retains the adjudicatory function within the Police Department. Plaintiffs believe that the first effort directed by the Court to improve the handling of complaints should give the Department the opportunity to "take care of its own."[2] Moreover, any police officer who is the subject of a citizen's complaint will have the assurance, under this plan, that he will be judged by other police officers who are sensitive to the problems and vicissitudes of police duty.[3]

While the plaintiffs believe that police adjudication of police is desirable, at least initially they realize that there must be checks against the overly tolerant attitudes of senior police officers reflected in the record in the *Goode* and *COPPAR* cases. According to plaintiff's plan, these checks consist of (1) a rigidly mandated procedure for

[2] By asserting in their proposed plan that adjudicatory responsibility should be lodged within the Department, plaintiffs do not foreclose themselves from taking a contrary position at a later date in the event the procedures ordered by the Court do not achieve the desired result of reducing the unacceptably high number of illegal police acts in dealing with citizens.

[3] Acts of misconduct rising to the level of a crime would, of course, be adjudicated in a court of law as well.

the investigation and handling of complaints[4] and (2) the availability of the results for public scrutiny. In return for the police having the right to adjudicate charges of alleged police misconduct, the public has a right to be assured that a competent and fair investigation is conducted, and to know that the results will be available for scrutiny by both the individual complainant and the news media.

The plaintiffs' plan therefore consists of the following elements:

1. A detailed complaint form designed to record relevant information of both the anonymous and the identified complainant.

2. Provision for the ready availability of such forms at numerous locations throughout the City.

3. Removal of investigational responsibility from the chain of command and the lodging of it within the Internal Affairs Bureau of the Department.

4. Provision for minimum standards of investigation including the taking of written or oral statements from all witnesses identified by the complainant as well as all Department witnesses.

5. The imposition of maximum time limits to assure a prompt handling of complaints consistent with the need for thoroughness of investigation.

6. Provision to assist the complaining witness in identifying the police officer in question if such assistance should be needed.

[4] In order to give the defendants a prior opportunity to revise their own procedures consistent with the Court's opinion, plaintiffs have not included substantive standards for the determination of "guilt" or for the appropriate discipline in a given instance. They may seek to have such standards inserted at a later date in the event th procedural proposals do not achieve the desired result.

7. Transmission of the complaint and the resulting investigation to the Police Commissioner or a Deputy Commissioner designated by him. At this point, a determination is made that either the police officer is at fault or that there is no probable cause to believe that the police officer committed the alleged act complained of. In these situations, the Police Commissioner or his Deputy either takes the appropriate disciplinary action or certifies the file closed with a directive that no further action be taken regard to the complaint. Notice of the action taken, together with a summary of the reasons therefor, issues at this time to the complainant.

8. Provision that where the investigational file discloses a conflict of facts and indicates the desirability of a hearing to achieve the proper result, the Commissioner may certify the complaint to the Police Board of Inquiry for a hearing.

9. Provision that in the event the case goes to the Police Board of Inquiry certain procedures including the complainant's representation by counsel shall be followed. After hearing the complaint, the Police Board of Inquiry will submit to the Commissioner or his Deputy for a final decision its factual findings and recommendations.

10. Provision that the results of the required investigation, hearing before the Police Board of Inquiry, if any, and adjudication by the Commissioner or his Deputy shall be public records available for inspection for two years after the date of final disposition of the complaint.

Contrary to the statement in the Court's opinion, plaintiffs in the *Goode* case have not taken the position that vesting the final adjudication in the Police Commissioner will necessarily prove to be inadequate. Rather, they have consistently adhered to the view that these matters should initially be entrusted to the Police Commissioner as long as there is a mandated procedure governing the processing and investigation of complaints. This will provide assurance that his decision will be based upon full and adequate facts.

Probably the strongest check against possible abuse under plaintiffs' proposed procedure is public scrutiny. All results of investigations, hearings before the Police Board of Inquiry, and decisions by the Commissioner or his Deputy shall be matters of public record. They shall be available to both the complainant and to the news media for two years. Plaintiffs believe that without this element of accountability to the public, there will be no adequate method to determine whether the revised proceedings have been implemented and are being carried out.

Respectfully submitted,

PETER HEARN
JACK LEVINE
F. JOHN HAGELE
Attorneys for Plaintiffs

DATED: April 24, 1973

DEFENDANTS' PROPOSED FINAL JUDGMENT
FILED SEPTEMBER 18, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-491

GERALD G. GODDE, et al.
v
FRANK L. RIZZO, et al.

FINAL JUDGMENT

AND Now, this day of 1973, following a trial before the undersigned District Judge wherein the issues were duly tried and a decision rendered,

It is ORDERED and ADJUSTED that:

1. Defendant Joseph F. O'Neill, Police Commissioner shall forthwith promulgate as an intra-departmental directive procedures for the receipt, investigation and disposition of civilian complaints of police misconduct, substantially in the form of the procedures attached to this Order as Appendix "A". Such directive shall, in addition to normal departmental distribution, be posted prominently in a conspicuous position at the reception desk of the Police Administration Building, at all district/unit headquarters, at the Mayor's Office for Information and Complaints, at the reception area of the Philadelphia Commission on Human Relations, and at such other places as the Commissioner may determine to be appropriate for the effective dissemination of information to individuals having contact with Philadelphia police officers.

Copies of the directive shall be maintained in quantity at all of the above locations and shall be provided upon request to any persons either specifically requesting copies of the directive or inquiring generally into the procedures for lodging complaints against police officers.

2. (a) Within fifteen (15) days from the date of this Order, the Philadelphia Police Department shall promulgate a form (Citizen's Complaint Report) for the use of Complaining parties in lodging complaints against police officers.

(b) The Citizen's Complaint Report shall designate and provide adequate space for, the name, address and telephone number of the complainant, the name, address and telephone number (if known) of the alleged victim of police misconduct if other than the complainant; the name, badge number or other identifying characteristics of the police officer(s) against whom the complaint is lodged; the date, time and location of the incident giving rise to the complaint; a narrative description of the events giving rise to the complaint; the names, addresses and telephone numbers of other witnesses to the alleged incident (if known); the names, badge numbers, or other identifying characteristics of other Police Department personnel witnessing or involved in the incident giving rise to the complaint; a statement whether the complainant, the alleged victim of police misconduct (if other than the complainant) or other witness to the alleged incident was questioned, detained, arrested and/or charged with criminal behavior as a result of the events giving rise to the complaint; the name, address and telephone number of any attorney or other representative of the complainant to whom communications concerning the complaint, its investigation and disposition should be addressed in lieu of the complainant (applicable only where the victim of the alleged police misconduct is himself the complainant); a place for the signature of the complainant.

(c) Within five (5) days following receipt of the proposed form by the Court and by the attorneys for plaintiffs herein, the attorneys for plaintiffs shall forward

to the Court their comments and alternative suggestions, if any.

(d) Within thirty (30) days from the further Order of this Court approving a form for the receipt of complaints, the Philadelphia Police Department shall cause sufficient copies of the approved Citizen's Complaint Report to be printed and distributed in accordance with the further provisions of this Order.

(e) Sufficient quantities of the Citizen's Complaint Report shall at all times be maintained at the following locations: a designated office within the Police Administration Building; all district/unit headquarters; the Mayor's Office for Information and Complaints; the main office of the Philadelphia Commission on Human Relations; a designated office of the District Attorney's Office.

3. Within thirty (30) days from the date of this Order, the Philadelphia Police Department shall file with the Court and serve upon counsel for plaintiffs a copy of the proposed manual for the training of police recruits, limited to the matters expressed in the Opinion and Order of this Court dated March 14, 1973. Within fifteen (15) days thereafter plaintiff may file with the Court and serve upon defendants their additional or alternative suggestions, if any, concerning the contents of such manual.

4. Defendants shall file with the Court and serve upon plaintiffs copies of the directive promulgated by the Police Commissioner and of the approved Citizen's Complaint Report forms as soon as the Directive and forms have been printed and made available in conformity with this Order.

BY THE COURT:

J.

PHILADELPHIA POLICE DEPARTMENT Directive 127

Subject: CITIZEN'S COMPLAINTS AGAINST POLICE

I. POLICY

A. All citizen's complaints against police officers shall be accepted and investigated and complainants will be notified of the action taken by the Police Department.

B. Special pre-numbered complaint forms entitled "Citizen's Complaint Report" shall be supplied in quantity to all Police Districts and Units and each district/unit shall be accountable for the allocated numbers issued.

C. A control log of sequential numbers shall be maintained in each Operations Room.

D. The Internal Affairs Bureau shall be the central control agency for the Police Department in all cases of citizen's complaints against police.

E. A Staff Inspector will be available to receive complaints from the nine police divisions on a 24-hour basis.

II. PROCEDURE FOR RECORDING AND PROCESSING COMPLAINTS

A. The Operations Supervisor in the district/unit receiving the complaint shall:

1. Provide to the complainant a "Citizen's Complaint Report" and instruct the complainant to fill in the required information on the form and sign it.

2. Record on the Control Log the Report Number, the D.C. Number, the complainant's name, address and date and time of complaint and name of Staff Inspector notified.

3. Prepare a 75-48, completing all block headings and Code 2703, "Complaints Against Police".
4. Notify the Staff Inspector on duty and record his name, date and time of notification on the Citizen's Complaint Report.
5. Affix signature and badge number.
6. Distribute the completed Citizen's Complaint Report as follows:

   Original — Chief Inspector, Internal Affairs Bureau
   1st Copy — Staff Inspector notified
   2nd Copy — District/Unit Commanding Officer
   3rd Copy — Complainant
7. Distribute 75-48 as follows:

   White — Reports Control and Review
   Yellow — District/Unit Commander
   Pink — Staff Inspector notified

B. The Staff Inspector on duty shall:
   1. Evaluate complaint and if possible, interview the complainant by phone and select one of the following:
      a. If an immediate investigation is indicated, confer with the pertinent Chief Inspector who will ensure that a proper investigation is initiated.
      b. Refer to the pertinent District/Unit Commanding Officer for investigation.

C. Assigned Investigator will prepare an Investigation Report (75-49) and distribute as follows:

   Original — Reports Control and Review
   Yellow — Chief Inspector, Internal Affairs Bureau
   Pink — Pertinent Detective Division Commander (if investigation reveals a crime has been or may have been committed)

   Goldenrod — Staff Inspector notified
   Green — Pertinent District/Unit Commanding Officer
   Blue — Police Department's legal advisor (Hold until investigation is completed and submit with copies of all related case material)

III. COMPLAINTS RECEIVED IN DISTRICT OTHER THAN THE DISTRICT OF OCCURRENCE

A. Complaints received in a district or unit other than the district or unit of occurrence shall be processed in the following manner:
   1. The Operations Supervisor in the district/unit where complaint is being reported shall:
      a. Have the complainant fill out a "Citizen's Complaint Report" as outlined in Section II of this directive.
      b. Obtain a D.C. Number from the district of occurrence and insert on "Citizen's Complaint Report" and on the Control Log.
      c. Notify Staff Inspector on duty.
      d. Prepare 75-48 and distribute as follows:

         Original — Reports Control and Review
         Yellow — Pertinent District/Unit Commander
         Pink — Staff Inspector notified

IV. ANONYMOUS COMPLAINTS

A. Complaints received from persons who wish to remain anonymous shall be received, recorded and processed in the same manner as outlined herein with the exception that the Operations Room Supervisor shall fill out the "Citizen's Complaint Form" and in space provided for complainant's signature, shall indicate "anonymous complainant".

B. The Staff Inspector on duty shall evaluate the anonymous complaint and determine the degree of investigation to be given such complaint.

V. COMPLAINTS RELATIVE TO CRIMES

A. If the complaint alleges to a crime and subsequent investigation establishes the fact, the provision as outlined in Directive 79 shall be followed.

VI. RESULTS OF INVESTIGATION

A. On all complaints where an investigation is initiated, a copy of the case and the results of the investigation will be forwarded to the Police Department's Legal Advisor, who will contact the complainant and inform him/her of the action taken by the Police Department.

B. If the matter is referred to the Police Board of Inquiry for review and recommendation to the Commissioner, the complaint shall be advised of such referral.

VII.

In every case where referral is made to the Police Board of Inquiry, the complainant shall be given not less than ten (10) days written notice of the hearing. Such notice shall expressly state that complainant has the right to appear, with or without counsel and with such other witnesses as he or she desires to present.

VIII.

The hearing shall be conducted by the Police Board of Inquiry which shall make its decision and recommendation to the Commissioner as promptly as possible. The Commissioner will provide the Legal Advisor with a copy of the decision and recommendation so that he may inform complainant in accordance with paragraph VI. A.

CITIZEN COMPLAINT REPORT

Name (Last) (First) (Middle) | Address | (City) | (State)

Telephone Number | Date of Birth | Male ☐ Female ☐ | Marital Status | Occupation

Location Complaint Reported | Time Complaint Reported | Location of Incident | Date of Incident | Time of Incident

Representative/Interpreter/ Person Assisting | Address | Telephone Number

Name(s) of Officer(s) Complained Against (If Known) | Rank | Badge Number | District/Unit | Assignment (Foot, Auto)

Age | Height | Weight | Color Hair | Color Eyes | Race | Scars

What Occurred?

What were you doing before the incident?

What was the officer doing before the incident?

This case is heard by the Police Board of Inquiry will you be willing and able to appear against the police officer involved?

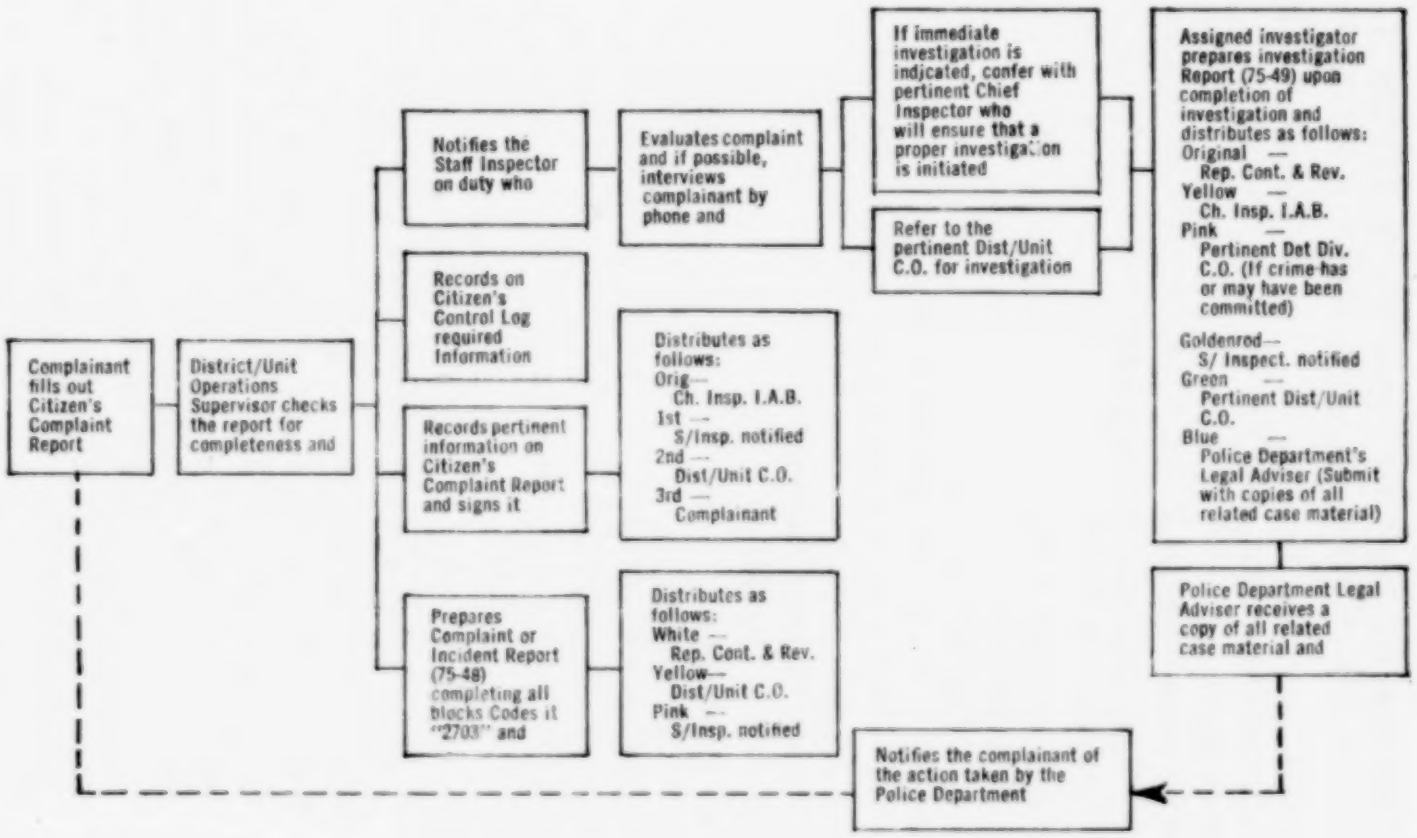
Signature of complainant | Date

Staff inspector notified | Date and Time Notified

Signature of officer receiving complaint

CITIZEN'S COMPLAINT CONTROL LOG (Type or Print—Use Ball Point Pen)			City of Philadelphia POLICE DEPARTMENT		DISTRICT/UNIT
Report Number	DC Number	Complainant's Name and Address	Date & Time Received	Received By:	Staff Inspector Notified

REPORT NUMBERS MUST BE IN CHRONOLOGICAL ORDER—VOIDED NUMBERS MUST BE FULLY EXPLAINED—ALL VOIDED REPORTS MUST BE SENT INTACT TO INTERNAL AFFAIRS BUREAU.



Letter

LETTER OF DISTRICT COURT TO COUNSEL, DATED SEPTEMBER 27, 1973

September 27, 1973

JOHN M. MCNALLY, JR., ESQ.
First Deputy City Solicitor
Law Department
City of Philadelphia
15th Floor, Municipal Services Bldg.
Philadelphia, Pa. 19107

MURRAY GOLDMAN, ESQ.
Law Department
City of Philadelphia
15th Floor, Municipal Services Bldg.
Philadelphia, Pa. 19107

PETER HEARN, ESQ.
20th Floor, Fidelity Building
Philadelphia, Pa. 19109

HARRY LORE, ESQ.
1420 Walnut Street
Philadelphia, Pa. 19102

WILLIAM L. AKERS, ESQ.
805 One E. Penn Square Bldg.
Philadelphia, Pa. 19107

Re: *COPPAR* v. *Tate, et al.*—No. 70-2430
Goode, et al. v. *Tate, et al.*—No. 70-491

Gentlemen:

I enclose herewith a draft of amendments which reflect the decision of this Court with regard to the form of the final judgment and Directive No. 127. It is requested that plaintiffs' counsel incorporate these changes and submit the completed documents to me for signature.

Very truly yours,

JOHN P. FULLAM

Proposed Amendments

PROPOSED AMENDMENTS TO DIRECTIVE No. 127

Amend paragraph I(B) to reflect that copies of the directive and of the complaint forms in the Spanish language shall also be made available at appropriate locations.

Amend paragraph IV(B) to read as follows:

"Upon receipt of the citizen's complaint report, the Chief Inspector, Internal Affairs Bureau, shall immediately assign a member of his staff who shall have responsibility for the investigation of the alleged incident. All such investigations shall be initiated by, and insofar as practicable carried out by, the staff of the Internal Affairs Bureau. The staff of the Internal Affairs Bureau shall have direct responsibility for all investigations. No such complaint shall be referred for investigation to the commanding officer of the police officer against whom the complaint is lodged, or to any other officer of the same command."

Amend paragraph VIII(C)(3) and (4) by deleting the last clause of subsection 3 ("and shall set forth the procedure stated herein below . . .") and by deleting subsection 4 in its entirety.

PROSPOSED AMENDMENTS TO THE FINAL JUDGMENT

Amend paragraph 3 of the final judgment to read as follows:

"3. Civilian complaints of police misconduct which have been received by the Philadelphia Police Department on or after March 14, 1973, and which have not

heretofore been finally disposed of, and all such complaints which may be received between the present date and the date on which an approved Citizen's Complaint Report form is promulgated in accordance with paragraph 2 of this Order, shall be processed in accordance with the procedures attached hereto, notwithstanding the initial unavailability of the official Citizen's Complaint Report form. Any such complaint which has been received since March 14, 1973, and which has heretofore been disposed of shall, upon written request of the complainant made within thirty days after the date on which the official Citizen's Complaint Report forms are available, be reprocessed in accordance with the procedures attached; and appropriate notices shall be posted (at the locations where the complaint forms are made available pursuant to this Order) giving notice of this right."

Amend paragraph 5 to read as follows:

"5. Within sixty days from the date of this Order, the defendants shall file with the Court and serve upon plaintiffs a certification of compliance with the provisions of this Order."

Add the following paragraph No. 6:

"6. The defendants shall maintain adequate statistical records, and annual summaries thereof, to provide an adequate basis for evaluation of the program for handling civilian complaints."

Add the following paragraph No. 7:

"7. This Court reserves jurisdiction to modify this Order and the attached procedures, and to grant such further relief as may be appropriate, upon the application of any party in interest."

MEMORANDUM, OCTOBER 5, 1973

FULLAM, *J.* October 5, 1973

On March 14, 1973, I entered Findings of Fact and filed an Opinion, applicable to both of the above cases, and entered Orders in each case, the effect of which was to require the defendants to formulate and submit to this Court revised procedures for handling civilian complaints against police officers, and to revise police training and instructional manuals, for the purpose of minimizing violations of the constitutional rights of citizens. The required submissions were made, and various conferences have been held, at which the views of all counsel were fully presented. Concurrently with the filing of this Memorandum, I am entering in each case a "final judgment," the principal features of which appear to be reasonably acceptable to the parties.

The issues to be resolved in this Memorandum relate to counsel fees, expenses and costs. Plaintiffs in the *Goode* case seek an award of counsel fees in the sum of $45,000, plus costs and disbursements in the sum of $4,167.58. Plaintiffs in the *COPPAR* case seek an award of $38,250, plus $300 in expenses.

I am satisfied that, in both cases, the Court's discretion should be exercised in favor of an award of counsel fees and expenses. The cases were brought for the vindication of constitutional rights, significant violations were established, and the plaintiffs succeeded in obtaining relief which should prove beneficial to all of the citizens of Philadelphia. The difficult question concerns the appropriate amount to be awarded.

Until the entry of this Court's Opinion and Order of March 14, 1973, the two cases were processed independently. The *COPPAR* plaintiffs sought sweeping injunc-

tive relief (including the appointment of a "receiver" for the Police Department), as well as damages; the *Goode* plaintiffs concentrated primarily upon obtaining improvements in the procedures for handling civilian complaints against police officers. Although both sets of plaintiffs were purporting to act on behalf of essentially the same class of plaintiffs, they proceeded independently, with different goals in mind, and with different theories as to the best way to present their respective cases. The defendants were essentially the same in both cases, and were represented throughout by the same counsel.

The defendants now assert, among other things, that the efforts of counsel were unnecessarily duplicative, and that their fees should be reduced accordingly. However, the defendants never made any attempt to obtain a consolidation of the two cases (notwithstanding occasional suggestions from the Court to that effect). Moreover, except for some duplication in argument, it appears likely that approximately the same amount of lawyer time would have been involved in any event. That is to say, there was little or no duplication in the evidence presented, or in the discovery and marshalling of evidence and pretrial preparation.

The defendants contend that counsel fees should not be awarded, or, if awarded, should be minimal: because the litigation did not achieve results as drastic as originally sought by the plaintiffs; because relief equivalent to what this Court actually granted could have been achieved at an early stage in the litigation by amicable settlement; and because many of the improvements in police routines which the plaintiffs sought were brought about by reason of a consent decree to which the defendants submitted in another lawsuit before a different judge. There is some merit in these arguments, but not much.

When the end result of this litigation is compared with the relief originally sought by the plaintiffs, it is apparent that the *Goode* plaintiffs achieved a greater degree of success than did the *COPPAR* plaintiffs. But the efforts of both sets of lawyers contributed substantially to the results which have been achieved. The *Goode* plaintiffs focused upon a small number of specific instances to establish the need for relief, and presented extensive evidence and argument in order to demonstrate the inadequacies of existing police procedures. The *COPPAR* plaintiffs, on the other hand, presented much more extensive evidence of specific instances of violations of constitutional rights, but relatively little which was helpful on the issue of the precise form of relief to be granted. This Court's determination that relief in some form should be granted was based to a significant degree upon the extensiveness of constitutional violations, as revealed by the *COPPAR* evidence.

Having participated actively, throughout this litigation, in various attempts to achieve an amicable settlement, this Court is in a position to evaluate the defendants' contention that most of the litigation was unnecessary. The case was vigorously contested throughout. While both sides in the *Goode* case expressed a willingness to resolve the litigation by the adoption and promulgation of revised police procedures, they never came close to agreeing upon what the changes should be. Even after this Court's Order of March 14, 1973, setting forth suggested guidelines, the parties were unable to reach agreement; and the terms of the final judgment entered by this Court differ in several important respects from the terms suggested by the defendants. In short, I am satisfied that the results achieved in this litigation would not have occurred through voluntary action on the part of the defendants, without the need for litigation.

It is correct that, as noted in my Opinion of March 14, 1973, the terms of the consent decree in the case of *Alexander* v. *Rizzo* (C.A. No. 70-992) entered on December 18, 1972, made it unnecessary for this Court to consider certain aspects of the relief sought by the plaintiffs in the present cases. It may well be that, if the pendency of the *Alexander* litigation had been brought to the attention of this Court, or plaintiffs' counsel, some reduction in the labors of counsel in the present cases might have been achieved. But, just as defense counsel made no attempt to achieve consolidation and possible conservation of legal efforts in the present cases, they never saw fit to bring the *Alexander* case to light, and I was not aware of it until after the consent decree was entered. In short, the most that can be said is that the defendants and their counsel in the present cases may have had an opportunity to reduce the amount of legal work which was necessary on behalf of the plaintiffs in the present cases, but failed to do so.

Turning now to the specifics of the requests for counsel fees: Counsel for the *Goode* plaintiffs have filed a comprehensive affidavit setting forth in detail the services performed and the time consumed in its performance. They claim compensation at the rate of $45 per hour. The defendants have filed a counter-affidavit, agreeing that $45 per hour is a reasonable rate, and neither admitting nor denying the amount of time spent (1,052.5 hours). In the course of a conference in chambers, both sides expressed the view that no hearing would be required, and that the Court could properly dispose of the issue on the basis of the affidavits submitted. It further appeared that, although not in a position to concede the accuracy of plaintiffs' counsel's time records, defense counsel had no reason to doubt their accuracy and, if a hearing were held, would not challenge them. Under these circumstances, I have concluded

that a hearing would be a useless formality, and that proof of the amount of time spent is adequately supplied on the record by the affidavit of plaintiffs' counsel.

I am therefore satisfied that, if the defendants should bear the full cost of plaintiffs' counsel fees, $45,000 would be a reasonable allowance for the services rendered.

In the *COPPAR* case, counsel have itemized the number of days of trial, the estimated amount of time spent in preparation for trial, and various other specified legal services; have computed the minimum charge for such services under the fee bill of the Philadelphia Bar Association; and have concluded that their services in this litigation, in view of its nature, importance, and complexity, should be compensated at a rate equal to double the minimum fee. I have concluded that certain discounts should be applied to the estimates submitted. While it is difficult to quantify these discounts, I have concluded that the following factors should be taken into account: (a) The same amount of work should have been done in somewhat less time than counsel apparently actually spent; (b) A considerable amount of work appears to have been devoted to objectives tangential to the actual issues involved in the litigation; and (c) no justification has been shown for evaluating counsel's services at double the suggested minimum rate. I have concluded that, if the defendants were to pay the full amount of plaintiffs' counsel fees to date in the *COPPAR* case, $20,000 would represent a reasonable amount for such services

The next question is whether the defendants should be required to pay the full amount of plaintiffs' counsel fees. As discussed at length in my Opinion of March 14, 1973, the evidence in this case disclosed no conscious policy of permitting or encouraging widespread violations of constitutional rights by police officers, and no basis for concluding that a majority of police officers commit such violations.

Nevertheless, the evidence did disclose that such violations have been occurring with unacceptable frequency, and that existing police procedures are inadequate to prevent such violations. Plaintiffs' counsel have performed a valuable public service in pursuing this litigation, but punitive of less than the full amount of plaintiffs' counsel fees is measures are not called for. I have concluded that awards appropriate in these cases. Here again, I believe it necessary to draw distinctions between the two cases. The *Goode* plaintiffs were more nearly successful, and their efforts were more directly devoted to attempting to obtain a rational solution to the problem. In the *COPPAR* case, plaintiffs were less successful, and somewhat less sensitive to the true public interest. Moreover, the defendants are less chargeable with failure to settle the *COPPAR* litigation, since it is apparent that no amicable settlement along the lines ultimately specified by this Court would ever have been acceptable to these plaintiffs.

Giving due weight to all of the factors discussed above, I have concluded that plaintiffs in the *Goode* case should be awarded counsel fees in the total sum of $25,000, plus costs and disbursements in the sum of $4,167.58; and that plaintiffs in the *COPPAR* case should be awarded counsel fees in the total sum of $10,000, plus costs and disbursements in the sum of $250 (calculated on the basis of the amount claimed, deducting an item of $50 for briefs, findings of fact and conclusions of law). Jurisdiction will be reserved over the question of counsel fees in connection with the individual damage claims in the *COPPAR* case. In addition, of course, plaintiffs in both cases are free to seek further awards in the event further proceedings become necessary.

ORDER, OCTOBER 5, 1973

And Now, this 5th day of October, 1973, it is ORDERED:

1. That the defendants shall pay to the plaintiffs in the *Goode* case, Civil Action No. 70-491, counsel fees in the sum of $25,000, plus disbursements and costs in the sum of $4,167.58.

2. That the defendants shall pay to the plaintiffs in the *COPPAR* case, Civil Action No. 70-2430, counsel fees in the sum of $10,000, plus disbursements and costs in the sum of $250.

3. That the foregoing Memorandum and this Order shall be filed of record in both cases.

John P. Fullam

J.

MEMORANDUM, DECEMBER 18, 1973

FULLAM, *J.* December 18, 1973

On March 14, 1973, this Court entered an Order requiring the defendants "to submit to this Court for its approval a comprehensive program for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court filed this date." Pursuant to that Order, the defendants submitted certain proposals, the plaintiffs submitted counter-proposals, the parties negotiated, and various conferences were held with the Court. The result was the entry of a Final Judgment, on October 5, 1973, embodying all of the provisions as to which the parties were in agreement, and resolving the various items as to which the parties had been unable to agree.

The October 5 Judgment requires the Police Commissioner of the City of Philadelphia to promulgate certain directives for the receipt, investigation and disposition of civilian complaints of police misconduct, substantially in the form set forth in Appendix A attached to the Final Judgment; orders the Philadelphia Police Department to promulgate and make available a form for the lodging of civilian complaints against police, within 15 days (*i.e.*, by October 22, 1973); provides for the handling of complaints which had been received during the interval between May 14, 1973 and October 22, 1973; and requires the Police Department to file with the Court, within 30 days (*i.e.*, by November 5, 1973) its proposed manual for training police recruits in the subject areas discussed in the March 14 Opinion.

On November 27, 1973, the plaintiffs filed a "Motion to Enforce Final Judgment," alleging that the defendants had failed to comply with any of the provisions of the Final Judgment. On the same date, the defendants filed a Motion

for a stay of the October 5 Judgment. This Motion, filed after the defendants had received notice of plaintiffs' Motion for Enforcement, asserts that, on October 25, 1973, the defendants filed notice of appeal from the October 5 Judgment. The defendants seek a stay pending final disposition of the appeal.

The principal thrust of the Motion for stay is addressed to the unfortunate delays which have already occurred in the disposition of this litigation. The Motion asserts "an examination of the docket entries of these cases indicate that neither the Court nor any counsel for any party felt that these cases were of such a nature that a prompt and immediate decision was necessary to do justice" and that "since time has not been deemed essential by anyone in the conduct of this litigation to date . . ." it would be unfair and unreasonable to refuse the requested stay. I find these averments puzzling, and totally inadequate to justify the stay requested.

By referring only to the docket entries, counsel is able to ignore the numerous negotiations, conferences and consultations which have characterized this litigation throughout its history. It is undoubtedly correct, as this Court acknowledged in its March 14, 1973 Opinion, that the decision rendered on that date was unduly delayed, for reasons which, for the most part, were not attributable to the parties or their counsel. But the earlier grant of partial preliminary relief, standing alone, would seem to negate the assertions in the present Motion. Moreover, it can scarcely be suggested that the defendants and their counsel bear no responsibility for the delays which have ensued since March 14, 1973, or that these delays are attributable to the Court.

In short, the grounds alleged in the defendants' Motion are plainly insufficient to support granting a stay of the October 5 Judgment. The question remains, however, in

view of the nature of the litigation, and particularly in view of the plaintiffs' pending Motion for Enforcement, whether a stay should be granted for other reasons.

At various times during the course of this litigation, virtually all of the succession of attorneys who have represented the defendants' interests have expressed their willingness to explore possible changes in the method of handling civilian complaints. Indeed, in their opposition to the award of counsel fees in these cases, the City defendants have recently insisted that the form of relief contemplated by the March 14, 1973 Order did not go beyond what the defendants had always been willing to accept. And it is fair to state that, while the October 5 form of Final Judgment may include some features found objectionable by the defendants, the resolution of all of the disputed items was more nearly in accord with the defendants' position than with the plaintiffs' position.

This does not mean, of course, that the October 5 judgment is in reality a consent decree. The defendants have consistently taken the position that they reserved the right to object to the grant of any relief, and that they would make a final decision as to whether or not to appeal, only after the precise form of the Final Judgment was determined.

It must be remembered that the revision in police procedures contemplated by the October 5 Order, and forecast by the March 14 Opinion and Order, represent an experimental minimum step for the prevention of recurring constitutional violations. Any further delay in the cooperative implementation of this minimal remedy might well create the necessity for very different kinds of relief.

I have concluded that the harm which would be caused by further delay in the remedial measures in question would greatly outweigh any harm which might flow from interim implementation of these measures even if the defendants' appeal is successful. In point of fact, the defendants have not suggested that there would be any harm at all if the stay is denied.

The stay will be denied, and the plaintiffs' Motion for Enforcement will be granted.

ORDER

AND NOW, this 18th day of December, 1973, it is ORDERED that the defendants' Motion for a Stay of the Final Judgment entered October 5, 1973 is DENIED. Plaintiffs' Motion for enforcement of the Final Judgment in these cases is GRANTED, effective five (5) days from and after the date of this Order.

JOHN P. FULLAM

J.

Petition

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NOS. 73-2024/5 & 73-2077/8
GERALD G. GOODE, et al.,
Appellees

v.

FRANK L. RIZZO, et al.,
Appellants

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY, etc., et al.,
Appellees

v.

HONORABLE JAMES H. J. TATE, FRANK L. RIZZO, et al.,
Appellants

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, STALEY, VAN DUSEN, ALDISERT, GIBBONS, ROSENN, HUNTER, WEIS and GARTH, *Circuit Judges*.

The petition for rehearing filed by
Defendant-Appellants

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

JOSEPH WEIS, JR.
Judge

Dated: December 6, 1974

Judge Adams took no part in the consideration or decision of this petition.

Order

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 70-2430

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.

v.

JAMES H. J. TATE, et al.

CIVIL ACTION No. 70-491

GERALD G. GOODE, et al.

v.

JAMES H. J. TATE, et al.

ORDER

On March 14, 1973, I directed the parties to submit proposals for implementing the changes in procedure for instructing police officers and for handling civilian complaints against the Philadelphia police, in accordance with the guidelines outlined in the Opinion filed on that date. The parties thereafter complied with that Order. Unfortunately, it now appears that certain of these submissions, although filed in chambers, were never docketed in the Clerk's office. All proposals were submitted without prejudice.

At the request of the parties, and in order to complete the record (now on appeal before the Supreme Court), it is ORDERED that the attached documents, viz:

Letter, John McNally, Esq., dated April 12, 1973, with enclosures (Draft of "Directive 127" and attachments)

Letter, Peter Hearn, Esq., dated April 24, 1973, with enclosures

Order

Letter of this Court to counsel, dated September 27, 1973, with enclosure

shall be docketed, *nunc pro tunc,* as of their respective dates.

It is further ORDERED that the submissions by the defendants were and are WITHOUT PREJUDICE to the defendants' position that the Order of March 14, 1973, as well as the Final Decree in these cases, were and are invalid.

May 7, 1975

JOHN P. FULLAM

J.